A S. BHAGIRATH AMMAL

v.

PALANI ROMAN CATHOLIC MISSION

DECEMBER 6, 2007

B **[B.N. AGRAWAL, P.P. NAOLEKAR AND P. SATHASIVAM, JJ.]**

Rent Control and Eviction:

C *Madras City Tenants Protection Act, 1921:*

s. 1(3) proviso (f) (as inserted by Tamil Nadu Act 2 of 1996, and s. 9—Purchase of rented land by tenant—Exemption to land belonging to 'religious institution'—Suit by land owner for recovery of possession D *of land—Application under s.9 by tenant for purchase of land—During pendency of proceedings, Amendment Act 2 of 1996 coming into force—Effect of—HELD: Land owner being a 'religious institution' within the meaning of s.1(3) proviso (f), entitled to benefit of the amendment Act—With coming into force of amendment Act, proceedings instituted* E *by tenant u/s 9 would abate—Decree passed thereafter in favour of tenant became a nullity and executing court committed an error in executing the sale deed—Abatement—Code of Civil Procedure, 1908—s.114—Or. 47, r.1—Review.*

F *s.9 r/w proviso (f) to s.1(3)—"Conveyance" of title—Proceedings u/s 9 for purchase of rented land by tenant pending – Meanwhile proviso (f) to s.1(3) inserted by Tamil Nadu Act 2 of 1996 coming into force—HELD: Decree having not been executed by proper document conveying title, proceedings u/s 9 are deemed to be pending and are determined with coming into force of the Amendment Act – The view* G *to the contrary, as expressed in* **Arulmigu Kasi Viswanathaswamy Devasthanam** *v.* **Kasthuriammal,** *[2006] 2 MLJ 281 (FB) is overruled.*

Code of Civil Procedure, 1908:

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Or. 47, r. 1—Review—Held: If the judgment/order is vitiated by an apparent error or it is pulpably wrong and the error is itself evident, review is permissible—On facts, High Court rightly applied the principles. A

Respondent-Mission, the owner of the suit land leased it out to the appellant tenant for a specified period. The tenant raised structure thereon. After expiry of the lease period, the Mission filed O.S. No.218 of 1969 for recovery of the land. However, both the parties reached a compromise and the suit was accordingly disposed of. Since the tenant did not vacate the premises the landlord filed a fresh suit being O.S. No.76 of 1977 whereas the tenants filed O.P. No.4 of 1977 in the said suit for purchase the suit land in terms of s.9 of the Madras City Tenants Protection Act, 1921. The trial court decreed O.S. 76 of 1997 and dismissed O.P. No. 4 of 1977. B C

The tenant filed two appeals, one against the decree in O.S. No.76 of 1977 and the other against the order in O.P. No.4 of 1977. The first appellate court, allowed both the appeals of the tenant. The landlord filed a second appeal against the judgment setting aside the decree passed in its favour and a revision petition against the order allowing O.P. No.4 of 1977 of the tenant. The High Court dismissed both the appeal as also the revision petition. The SLP filed by the landlord was also dismissed by the Supreme Court. In the meantime, the tenant deposited the full site value and filed an execution petition i.e. E.P. No.257 of 1985 for execution of the sale deed of the land/ property in question in her favour. On the other hand, the landlord filed an execution petition being E.P.No. 79 of 1983 for executing the compromise decree in O.S. No. 218 of 1969. The executing court allowed E.P. No.257 of 1985 filed by the tenant and dismissed EP No. 79/83 filed by the landlord. The landlord filed a revision petition being CRP. No.1445 of 1988 against the order in E.P. No. 79 of 1983 and an appeal being A.A.O. No. 767 of 1989 against the order in E.P. No.257 of 1985. Both the matters were dismissed by the High Court by its order dated 26.7.1997 upholding the directions of the executing court to execute the sale deed in favour of the tenant. Consequently, the sale deed in favour of the tenant was executed by the Court on D E F G H

A 28.10.1996. The landlord unsuccessfully filed SLPs before the Supreme Court. Thereafter review applications being Review Application Nos.8 and 9 of 1997 were filed by the landlord in the High Court against its order dated 26.7.1997, but the same were dismissed. The landlord challenged the order in S.L.Ps. before the Supreme B Court, which passed an order of remand of Review Applications No.8 and 9 of 1977. Meanwhile the Madras City Tenants Protection Act, 1921 was amended by the Madras City Tenants Protection (Amendment) Act (Tamil Nadu Act 2 of 1996). Review Petitions No.8 and 9 of 1997 were allowed by the High Court. Consequently, the C proceedings for return of the registered sale deed to the tenant were dismissed by the executing court.

In the instant appeals filed by the tenant, it was reiterated on behalf of the appellant that the issue could not be agitated once again by way of review application and, therefore, the judgment of the High D Court should be set aside.

The only point for consideration in the instant appeals was as to whether the High Court was justified in allowing Review Application Nos.8 and 9 of 1997 under Order 47, r. 1 of the Code of E Civil Procedure, 1908. The Court also called for a report from the trial court, which gave a finding that the respondent Mission was a religion institution within the meaning of s.1(3) proviso (f) of the Madras City Tenants Protection Act, 1921 as amended by Tamil Nadu Act 2 of 1996.

F Dismissing the appeals, the Court

HELD: 1.1. The provision of Rule 1 of Order 47 of the Code of Civil Procedure, 1908 makes it clear that an application for review would be maintainable not only upon discovery of a new and important G piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of same mistake or for any other sufficient reason. If the error is so apparent that without further investigation or enquiry only one conclusion can be drawn in favour of the revisionist, in such circumstances, the review will lie. Thus, if the judgment/order is vitiated by an apparent H

error or it is palpably wrong and if the error is self evident, review is permissible. In the instant case, the High Court has rightly applied the principles, as provided under Order 47 Rule 1 C.P.C. By virtue of the order of this Court, the High Court was directed to decide the review applications on merits. In such circumstances, the High Court was fully justified in analyzing the issue as directed by this Court, and its ultimate decision that respondent-Mission is a "religious institution" cannot be faulted with. A B

[Paras 5, 10 and 12] [1059-C, D, E, F; 1064-C, D; 1067-D]

1.2. The High Court, on appreciation of acceptable oral and documentary evidence, has rightly arrived at a factual conclusion that the respondent-Mission being a Roman Catholic Diocese, is a "religious institution". In view of the categorical finding of the High Court as well as the report of the trial court respondent-Mission is a 'religious' institution within the meaning of s.(1)(3) proviso (f) of the Madras City Tenants Protection Act, 1921 as amended by Tamil Nadu Act 2 of 1996. In such circumstances, as per sub-section (3) of s.1, all proceedings initiated by a tenant would abate. C D

[Paras 6 and 10] [1059-A; 1060-A-B; 1061-C, D; 1065-B, C]

2.1. In the instant case, on the date when the amendment Act came into force, the application under s.9 of the principal Act filed by the tenant was still pending. The sale deed was executed only on 28.10.1996 whereas the amendment Act (Act No.2 of 1996) had come into force on 11.1.1996 much earlier to the execution of the sale deed. As rightly concluded by the High Court, the decree in O.P. No.4 of 1977 became a nullity on and from 11.1.1996 and the executing court committed an error in executing the sale deed after coming into force of the Amendment Act. [Para 10] [1065-C, D, E] E F

2.2. Further, keeping in view the provisions of s. 9(1)(b) and s.9(3)(b) and the expression "conveyance" occurring in clause (a) of s.9(3), as rightly observed by the High Court in the judgment under appeal, unless the sale deed is executed either by the Mission or by the Court, the fruits of the decree will not be realized by the tenant and the proceedings will come to an end only upon execution of the sale deed. The High Court, in the judgment under appeal, is right in G H

A holding that the decree not having been executed by means of a sale deed, the proceedings were deemed to be pending and, therefore, were determined with the coming into force of the amendment. The view to the contrary, as expressed in Arulmigu Kasi Viswanathaswamy Devasthanam v. Kasthuriammal* runs counter B to the language used in the statute, and, as such, the same cannot be accepted. [Para 10 and 11] [1065-E-G; 1066-E-H; 1067-A]

**Arulmigu Kasi Viswanathaswamy Devasthanam* v. *Kasthuriammal,* (2006) 2 MLJ 281 (FB), overruled.

C 2.3. By the Amendment Act, the Tamil Nadu legislature has amended Section 1 of the principal Act w.e.f. 11.1.1996. Thus, from 11.1.1996, benefits conferred on the tenants under Section 9 of the principal Act have been deleted in respect of lands belonging to religious institutions or religious charity of Hindu, Muslim, Christian D or other religions. The amended Act has given the respondent-landlord a valuable right of exemption from the provisions of the principal Act. The amendment Act has been upheld by a Full Bench of the High Court* and the said decision has been approved by this Court. [Paras 8 and 9] [1062-B; 1063-F; 1064-A]

E **N. Sreedharan Nair* v. *State of Tamil Nadu,* (2000) 3 M.L.J. 616 and *Mylapore Club* v. *State of T.N. and Anr.,* (2005) 5 CTC 494, referred to.

2.4. In the instant case, the review petitioner/respondent is a F "religious institution" within the meaning of the amended provision and entitled to the benefits of the amended Act. Further, if the same is not applied to the respondent-Mission, it would result in miscarriage of justice and it had been rightly rectified by the High Court by the judgment under appeal. The benefit that has been G bestowed upon the religious institution by the Legislature cannot be ignored lightly merely because the issue was decided by way of review applications. Inasmuch as at the relevant point of time, the Amendment Act 2 of 1996 was not enacted and not available for consideration before the Court and also the proceedings instituted by the tenant/appellant were pending and not reached finality on the H

date of coming into force of the amended Act, the High Court is justified in granting the relief as provided under the amendment Act (Act No.2 of 1996) by allowing the review applications.

[Para 12] [1067-A, B, C, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 78-79 of 2002.

From the Judgment and final Order dated 20.7.2001 of the High Court of Judicature at Madras in Review Applications Nos. 8 & 9 of 1997.

M.N. Krishnamani, B. Sridhar, I. Madhavi and K. Ram Kumar for the Appellant.

P.P. Rao, V.J. Francis, Anupam Mishra, Jessy Kurien, D.S. Chadha, Purushottam, T.S. Abhishek Gupta and Sahar Bakht for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. (1) Challenging the Order dated 20.7.2001 passed by the High Court of Judicature at Madras in Review Application Nos. 8 & 9 of 1997 filed by the respondent herein whereby a learned single Judge of the High Court allowed the same, the appellant has filed these appeals.

(2) The respondent herein was the owner of the suit vacant land in question. In 1959, the suit land was leased out for five years by the respondent to the appellant herein. On 3.3.1965, the tenancy was renewed for another period of three years. After the expiry of three years, the respondent wanted the appellant to vacate the premises. As the appellant did not vacate, the respondent issued a notice on 28.8.1968 demanding possession for which he sent a reply with false and frivolous allegations. In the year 1969, the respondent filed O.S. No. 75 of 1970 as a counter blast for getting a fresh lease document from the respondent. On 14.12.1970, O.S. No. 218 of 1969 was compromised and O.S. No. 75 of 1970 was dismissed as not pressed. The appellant did not vacate the suit property in spite of repeated demands by the respondent, therefore, the respondent filed a fresh Suit i.e. O.S. No. 76 of 1977 for delivery of

A possession. On 27.7.1978, O.S. No. 76 of 1977 was decreed in favour of the respondent while O.P. No. 4 of 1977 filed by the appellant for purchase of the land by her was erroneously dismissed and an order of eviction was passed against the appellant by the Court of District Munsif, Palani. The Madras City Tenants Protection Act, 1921 gives the option B of purchasing the site from the landlord by the tenant in case a suit for eviction is filed by the landlord where the tenant is the owner of the superstructure standing there on and if the tenant is not interested in buying the site then the landlord can buy the superstructure or ask the tenant to remove the superstructure and seek delivery of possession. The said Act C was extended to the town of Palani in Tamil Nadu only in 1975, therefore, the available to the appellant as the owner of the superstructure. The appellant filed an application O.P. No. 4 of 1977 in Suit No. 76 of 1977 for purchase of land by him which was dismissed. Against the said order, the appellant filed A.S. No. 121 of 1978 and another A.A.O. No. 94 of D 1978 against the order in O.P. No. 4 of 1977. The appellate Court allowed the appeals of the appellant directing the respondent to sell the land to the appellant for an amount of Rs. 65,092.50. Aggrieved by the said order, the respondent filed S.A. No. 2149 of 1981 and C.R.P. No. 2204 of 1980 against the order allowing the petition of the appellant for E purchase of the suit property. The second appeal and the revision petition filed by the respondent were dismissed by a learned single Judge of the High Court of Madras. Against that order, the respondent filed S.L.P. (c) Nos. 5029 of 5030 of 1984 before this Court which were dismissed. After the stay order operating from 1980 to 1985 continuously ceased F to operate, the appellant deposited the full site value. With the dismissal of the S.L.Ps by this Court and the deposit of the full site value by the appellant, the same became final. In the year 1985, the appellant filed an execution petition being E.P. No. 257 of 1985 for execution of the sale deed of the land in his favour by the respondent. On the other hand, the respondent filed an execution petition being E.P. No. 79 of 1983 for G executing the compromise decree in O.S. No. 218 of 1969. Both the petitions were taken up together for disposal. The Executing Court allowed E.P. No. 257 of 1985 filed by the appellant for execution of the sale deed and dismissed E.P. No. 79 of 1983 filed by the respondent. Dissatisfied therewith, the respondent filed C.R.P. No. 1445 of 1988 against the order H

in E.P. No. 79 of 1983 and A.A.O. No. 767 of 1989 against the order in E.P. No. 257 of 1985. Both the petitions were heard together and the same were dismissed by the High Court upholding the directions of the Execution Court to execute the sale deed in favour of the appellant. On 28.10.1996, the sale deed in favour of the appellant was executed by the Court of District Munsif, Palani. The sale deed was registered as Document No. 1908 of 1996 in the Registrar's office. Against the order in C.R.P. No. 1445 of 1988 and A.A. O. No. 767 of 1989, the respondent filed S.L.P. (C) Nos. 22925 and 22926 of 1996 before this Court which were dismissed. After every thing became final with the execution and registration of the sale deed in favour of the appellant and the dismissal of the S.L.Ps by this Court, the respondent filed review applications being Review Application Nos. 8 & 9 of 1997 in the High Court against the order dated 26.7.1997 passed by the High Court on the same grounds that they were not maintainable after the dismissal of the S.L.Ps by this Court, On 7.2.1997, the appellant filed an application E.A. No. 820 of 1996 for return of the duly registered sale deed and the same was allowed. The respondent was not a party to the said E.A. and he did not make any effort to implead himself. Against the said order, the Registrar who was a party filed C.R.P. No. 1819 of 1997. In the said C.R.P., the respondent filed an application being C.M.P. No. 3005 of 1998 to implead himself which was dismissed by the High Court. The C.R.P. filed by the Registrar was dismissed by the High Court. The C.R.P. filed by the Registrar was dismissed and the Registrar returned the sale deed to the executing Court. Against the order dated 16.12.1998 in the R.A. Nos. 8 & 9 of 1997, the respondent filed S.L.P.(c) Nos. 6097 & 6098 of 1999 before this Court. On 2.2.2001, this Court passed an order of remand of the review applications in S.L.P.(c) Nos. 6097-6098 of 1999 because of the decision of this Court in *Kunhyammed* v. *State of Kerala,* [2000] 6 SCC 359, holding that the summary dismissal of a special leave petition does not bar a review petition permissible under the law. The respondent field an aplication in the review applications for producing additional documents which was allowed by a learned single Judge of the High Court. As a result of the order of the High Court, the proceedings for return of the registered sale deed to the appellant was dismissed by the executing Court. Aggrieved by the said order, these

A appeals have been preferred by the appellant.

(3) Heard Mr. M.N. Krishnamani, learned senior counsel appearing for the appellant and Mr. P.P. Rao, learned senior counsel appearing for the respondent.

B (4) The only point for consideration in these appeals is whether the High Court is justified in allowing. Review Application Nos. 8 & 9 of 1997 under Order XLVII Rule 1 C.P.C.

(5) Since we have already narrated the case of both the parties in
C the paragraphs supra, there is no need to traverse the same once again. Before considering the rival claims made by both the parties, it is useful to refer the provisions under Order XLVII Rule 1 C.P.C. relating to Review which read as under:

"1. *Application for review of Judgment* :- (1) Any person
D considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

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(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when
F the decree was passed or order made, or on account of some mistake or error apparent on the fact of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

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(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which

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he applies for the review.

[Explanation - The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shal not be a ground for the review of such judgment.]"

A reading of the above provision makes it clear that Review is permissible (a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on account of some mistake; (c) where error is apparent on the face of the record or is a palpable wrong; (d) any other sufficient reason. If any of the conditions satisfy, the party may apply for a review of the judgment or order of the Court which passed the decree or order. The provision of Rule 1 of Order 47 of the Code of Civil Procedure, 1908 make it clear that an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for ant other sufficient reason. An error contemplated under the Rule must be such which is apparent on the fact of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the Court, If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the appellant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled re-hearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set at right by reviewing the order. With this background, let us analyze the impugned judgment of the High Court and find out whether it satisfy any of the tests formulated above.

(6) It is the claim of the respondent herein that it is a Roman Catholic Mission and is a religious institution within the meaning of Amended provisions of The Tamil Nadu City Tenants Protection Act, 1921

A (hereinafter referred to as "the Principal Act). The "Roman Catholic Mission" (hereinafter "Mission" in short), in support of the above claim, filed several documents, namely, Ex. A-1 to A-15 and also let in evidence of PW-1 an PW-2 who were conversant with their activities. The High Court, on appreciation of those materials, arrived at a factual conclusion B that the same came under the Roman Catholic Diocese which has as its object and maintenance of churches and hence it is a "religious institution". Though it was contended by the learned senior counsel appearing for the appellant herein that only certificate of registration was produced by the Mission to substantive its case that it is a religious institution. in view of C the categorical factual finding by the High Court based on acceptable oral and documentary evidence, we reject the said objection. It is relevant to point out that when the above appeals were heard on 19.01.2006 at length, this Court after finding that it would be just and expedient to call for a finding from the trial Court as to whether the Palani Roman Catholic D Mission is a 'religious institution' or 'institution of religious charity' belonging to Hindu, Muslim, Christian or other religion within the meaning of Section 1(f) of the Madras City Tenants' Protection Act, 1921, as amended by Act 2 of 1996, directed the trial Court ot record a finding on the said question after giving opportunity of adducing oral and E documentary evidence to the parties and thereupon remit its finding to this Court within a period of six months from the date of receipt of copy of the said order. Pursuant to the said direction, this Court received a report dated 09.08.1996 from the trial Court i.e. District Munsiff, Palani and the same was handed over to learned counsel appearing on behalf F of the parties. They were given an opportunity to peruse the report and submit their objection, if any. The report shows that the learned District Munsiff, after affording opportunity to both parties and after recording evidence and relying on documents placed by both parties, arrived at the following conclusion:-

G "..... ..... Thus, on cumulative appraisal of the evidence on record in the context of the undisputed averments of the proof-affidavit of the P.W.1 and P.W.2 in particularly P.W.2 with regard to the factum of conducting the religious ceremonies, prayers and masses in the plaintiff-Mission, this Court feels that an inescapable and H irresistible conclusion can be drawn that the plaintiff-mission is a

place of worship for the people who have faith in the Christianity in particularly believers attached with the Roman Catholic denomination. Therefore, in view of the finding as above, this Court hold that the Palani Roman Catholic Mission is a religious institution in the context of the sec. (1)(f) of the Madras City Tenants Protection Act, 1921-as amended by Act 2 of 1996.

In the result, on the basis of the evidence emerged on record, I hold that the Palani Roman Catholic Mission is a religious institution within the meaning of sec. (1) (f) of the Madras City Tenants Protection Act, 1921 as amended by the Act 2 of 1996."

In view of the conclusion of the High Court as well as the report of the trial Court holding that Palani Roman Catholic Mission-respondent herein is a religious institution within the meaning of Section (1) (f) of the principal Act as amended by Madras City Tenants Protection act as amended by Act 2 of 1996. We agree with the said conclusion.

(7) Now we will consider the provisions of the Principal Act as well the provisions of the Amendment Act i.e., the Madras City Tenants' Protection (Amendment) Act, 1994 (Tamil Nadu Act 2 of 1996) [hereinafter referred to as "the amended Act"]. The Statement of Objects and Reasons of the Act shows that in many parts of the City of Madras (and other Municipal towns) dwelling houses and other buildings have from time to time been erected by tenants on lands belonging to others, in the expectation that subject to payment of a fair ground rent they would be left in their undisturbed possession, in spite of any agreement about duration of the tenancy and the terms on which the buildings were to be leased. Attempts made or steps taken to evict a large number of such tenants had shown that such expectations are likely to be defeated. The tenants, if they were evicted, can remove the superstructure which can only be done by pulling down the building, or claim compensation for the value of the building put up by them and the value of any tree planted by them, As a result of such wholesale destruction, congested parts of the city (municipal towns) would become more congested to the serious detriment of public health. In the circumstances, it was though just and reasonable that the landlords when they evict the tenants should pay for and take the buildings. There may however be cases where the landlord is unwilling to

A eject a tenant, if he can get a fair rent for the land. The Act provides for the payment of compensation to the tenant in case of ejectment for value of any buildings which may have been erected by him, or his predecessor-in-interest. It also provides for the settlement of fair rent at the instance of the landlord, or tenant. Provision is also made to enable the tenant to B purchase the land in his occupation, subject to certain conditions.

(8) Section 9 gives the right to the tenant, who has put up a superstructure to purchase such part or extent of the land, be reasonably required for his enjoyment. Since we are concerned about the Amended Act, there is no need to go into other provisions. The Amended Act C received the assent of the President on 5.1.1996 and published in the Tamil Nadu Government Gazette Extraordinary Part IV Section 2 dated 11.1.1996. By Amendment Act, the Tamil Nadu legislature has amended Section 1 of the principal Act and added certain provisions in sub-section (3). The amended provisions are as follows:

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> *"Amendment of Section 1*- In Section 1 of the Madras City Tenants' Protection Act, 1921 (Tamil Nadu Act III of 1922), (hereinafter referred to as the principal Act), in sub-section (3), in the first proviso; after clause (e), the following clause shall be added, E namely:-
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> (f) by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion.
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> Explanation :- for the purpose of this Clause"-
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> F (A) "religious institution" means any-
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> (i) temple
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> (ii) math;
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> (iii) mosque G
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> (iv) church; or
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> (v) other place by whatever name known
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> which is dedicated to, or for the benefit of, or used as of right by, any community or section thereof as a place of public H

religious worship;

(B) "religious charity" means a public charity associated with a religious festival or observance of religious character (including a wakf associated with a religious festival or observance of religious character), whether it be connected with any religious institution or not."

3. *Certain pending proceedings to abate* - Every proceeding instituted by a tenant in respect of any land owned by any religious charity belonging to Hindu, Muslim, Christian or other religion and pending before ant Court or other authority or officer on the date of the publication of this Act in the Tamil Nadu Government Gazette, shall in so far as the proceeding relates to any matter falling within the scope of the principle Act, as amended by this Act, in respect of such land, abate and all rights and privileges which may have accrued to that tenant in respect of any such land and subsisting immediately before the said date shall in so far as such rights and privileges relate to any matter falling within the scope of the principal Act, as amended by this Act, cease and determine and shall not be enforceable:

Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which a decree or order passed had been executed or satisfied in full before the said date."

We have already mentioned that the amendment was published in the Gazettee on 11.1.1996 and as per sub-section (2) of Section 1, it came into force on the date of publication. In other words, from 11.1.1996 benefits conferred on the tenants under Section 9 of the Principal Act have been deleted in respect of the lands belonging to religious institution or religious charity of Hindu, Muslim, Christian or other religion. We have already referred to the finding of the High Court holding that the respondent herein is a Roman Catholic Mission which is a "religious institution" within the meaning of the amended provision. The Amended Act has given the respondent herein a valuable right of exemption from the provisions of the Principal Act.

A (9) It is relevant to mention here that the Amendment Act No. 2 of 1996 has been upheld by the Full Bench of the High Court in *N. Sreedharan Nair* v. *State of Tamil Nadu*, (2000) 3 M.L.J. 616 and the said decision of the Full Bench has also been approved by this Court by dismissing C.A. Nos. 4531 of 2003 etc.etc. titled *Mylapore Club* v. B *State of T.N. Anr.*, (2005) 5 CTC 494, filed against the same.

(10) Both before the High Court as well as before this Court, it was contended that in view of the orders/decisions of various Courts including this Court, the issue cannot be agitated once again by way of review application; hence, the impugned Order of the High Court is to be set C aside. Mr. P.P. Rao, learned senior counsel appearing for the respondent, has brought to our notice that in the earlier proceedings, this Court in Civil Appeal Nos. 1055-1056 of 2001 directed the High Court to consider the review applications afresh. In other words, by the virtue of the said order of the High Court was directed to decide, the review D applications on merits. In such circumstances the High Court was fully justified in analyzing the issue as directed by this Court and its ultimate decision that Roman Catholic Mission is a "religious institution" cannot be faulted with since it relied on acceptable materials in the form of oral and documentary evidence (vide Ex. A-1 to A-15 and evidence of PW-E 1, PW-2). It was demonstrated that these religious and charitable institutions were not only deprived of their legitimate income but also their valuable properties. It was also their claim that because of the provision, namely, Section 9 of the Act, the tenants flourished and the landlord-institutions were crippled. It was further pointed out that in those F circumstances Act No. 2 of 1996 was enacted in order to protect those religious institutions. We have already concluded that pleadings of the respondent herein-review petitioners and various orders/judgments show that it is a "religious institution". As rightly observed by the High Court, the claim that the "Mission" is a "religious institution" is apparent from G the materials without any further investigation. In such circumstances, as per Section 1 (f) of the amended Act, all proceedings instituted by a tenant would abate. The amended Act came into force from 11.1.1996 and on the question whether on the date of coming into force of the amended Act, giving certain benefits to the religious institutions and taking away H the right of the tenant under Section 9, the High Court concluded as under:

"...The Transfer C.M.A. which was a continuation of the application under Section 9 of the Tamil Nadu City Tenants Protection Act filed by the respondent who is the tenant was still pending. The proceedings had not attained finality. Therefore, they terminated and they became unenforceable. On the date when the first appeal and the C.M.A. were disposed of, tenancy granted by religious institutions were still governed by the provisions of the Act. Now, by the introduction of Act 2 of 1996, they cease to apply, ergo, all proceedings instituted by the tenant shall abate. All rights and privileges that may have accrued to her cease. They come to an end and they shall not be enforceable. The jurisdiction of the Court to decide the tenants claim ceased."

It is clear that on the dated when the amended Act came into force, the application under Section 9 of the principal Act filed by the tenant-appellant herein was still pending. Though Mr. M.N. Krishnamani, learned senior counsel appearing for the appellant, submitted that all formalities were completed before coming into force of the amended Act, as pointed out earlier, pursuant to the order of the High Court, the sale deed was executed only on 28.10.1996 whereas the amended Act No. 2 of 1996) came into force on 11.1.1996 much earlier to the execution of the sale deed, hence, the contention of learned senior counsel for the appellant is not acceptable and we are in agreement with the conclusion arrived at by the High Court. As rightly concluded by the High Court, the decree in O.P. No. 4 of 1977 became a nullity on and from 11.1.1996, the executing Court committed an error in executing the sale deed after coming into force of amended Act. Further as rightly observed by the High Court, unless the sale deed is executed either by the Mission or by the Court, the fruits of the decree will not be realized by the tenants and the proceedings will come to an end only upon execution of the sale deed. Therefore, the tenant cannot be heard to say that the provisio applies to him and that the proceedings are not invalidated. The High Court is right in holding that the decree not having been executed by means of a sale deed, the proceedings are deemed to be pending and, therefore, were determined with the coming into force of the amendment Act.

(11) Finally, Mr. M.N. Krishnamani placing reliance on the Full

A Bench decision of the Madras High Court rendered in CRP(NPD) 2758 of 1996 titled *Arulmigu Kasi Viswanathaswamy Devasthanam* v. *Kasthuriammal,* submitted that the moment tenant deposited the amount the order is fully satisfied. He further pointed out that as per the said decision the moment the order under Section 9(3)(a) is passed, it shall B be construed that the proceedings got terminated and the suit stood dismissed as per Section 9(3) (b) of the Act. We are unable to accept the said proposition. The relevant provisions are as follows:-

> "9. (3) (a) On payment of the price fixed under clause (b) of sub-section (1) the Court shall pass an order directing the conveyance C 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.
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> (b) on the Order referred to in clause (a) being made, the suit or proceedings 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."

E It is clear that if the tenant complies with the order passed under Section 9 (1) (b) and deposits the amount within the time as fixed, the Court has to pass an order directing the conveyance by the landlord to the tenant. It is true that as per Section 9 (3) (b) on passing an order under clause (a) the suit or proceeding shall stand dismissed. In the light of the language F used in clause (a) i.e. "Conveyance" to be made by the landlord to the tenant, till the proper document conveying title to the tenant it is presumed that the proceeding is kept pending. To put it clear that unless the sale deed is executed by the landlord in favour of the tenant or in the alternative by the Court on behalf of the landlord the fruits of the decree can not be G realized. The suit or proceeding will come to an end immediately on execution of sale deed either by the landlord or by the Court on behalf of the landlord. In our case, as said earlier, the sale deed was executed only on 28.10.1996, however the amended Act 2/96 came into force on 11.01.1996 much earlier to the execution of sale deed. The view expressed H in the Full Bench decision runs counter to the language used in the statute

and we are unable to accept the same. A

(12) From the materials, we are satisfied that the conclusion reached by the High Court holding that the review petitioner/respondent herein is a "religious Mission"/"Institution" within the meaning of amended provision and entitled to the benefits of amended Act. Further if the same is not applied to the Mission, if would result in miscarriage of justice and it had been rightly rectified by the High Court by the impugned judgment. The benefit that has been bestowed upon the religious institution by the Legislature cannot be ignored lightly merely because the issue was decided by way of review applications. Inasmuch as at the relevant point of time, the Amended Act 2 of 1996 was not enacted and not available for consideration before the Court and also of the fact that the proceeding instituted by the tenant/appellant herein was pending and not reached finality on the date of coming into force of the amended Act, we are satisfied that the High Court is justified in granting the relief as provided under the amended Act (Act No. 2 of 1996) by allowing the review applications. As held earlier, if the judgment/order is vitiated by an apparent error or it is a palpable wrong and if the error is self evident, review is permissible and in this case the High Court has rightly applied the said principles as provided under Order 47 Rule 1 C.P.C. In view of the same, we are unable to accept the arguments of learned senior counsel appearing for the appellant, on the other hand, we are in entire agreement with the view expressed by the High Court. B C D E

(13) In the light of the above discussion and conclusion, the appeals fail and are accordingly dismissed. No costs. F

S.K.S. Appeals dismissed.