

TAMIL NADU WAKF BOARD

v.

SYED ABDUL QUADER & ORS.

(Civil Appeal Nos. 2232-2233 of 2002)

OCTOBER 9, 2012

[R.M. LODHA AND ANIL R. DAVE, JJ.]

A

B

C

D

E

F

G

H

Tenancy – Madras City Tenants’ Protection Act, 1921 – ss.9 and 11 – Madras City Tenants’ Protection (Amendment) Act, 1994 – s.3 – Proceedings initiated by tenant-respondents under s.9 of the 1921 Act in respect of land owned by appellant-Wakf Board and pending before the court – Effect of coming into force of the 1994 Amendment Act – Held: In view of s.3 of the 1994 Amendment Act, the application made under s.9 of the 1921 Act abated by operation of law and the tenant-respondents ceased to have any enforceable rights in respect of such land.

The plaintiff-Wakf Board (alongwith Aminjikai Mosque and Burial Ground represented by its Secretary) filed suit for a declaration that the suit property (land and superstructure) was a Wakf property and for directing the tenant-defendants to hand over vacant possession of the suit property to them. The tenant-defendants set up the defence that they were governed by Madras City Tenants’ Protection Act, 1921 as amended from time to time and in the absence of any notice under Section 11 of the 1921 Act, the suit was not maintainable. They further stated that they had made an application under Section 9 of the 1921 Act for sale of the land on which superstructure had been built by their predecessor in title and as lessees they were entitled to purchase the land from the plaintiffs. The trial court decreed the plaintiffs’ suit. The first appellate court affirmed the decree. On

- A second appeal, the High Court remanded the matter to the trial court to proceed further with the application made by the tenant-defendants under Section 9 of the 1921 Act. The plaintiffs filed Review Petition, bringing to the notice of the High Court that by virtue of Section 3 of the Madras City Tenants' Protection (Amendment) Act, 1994, the rights and privileges of the tenant-defendants had ceased to be enforceable and their application under Section 9 of the 1921 Act had abated. The Review Petition was dismissed by the High Court and, therefore, the present appeals by the plaintiff-appellant Board.

Allowing the appeals, the Court

- HELD: 1. The Madras City Tenants' Protection Act, 1921 came to be amended by the Madras City Tenants' Protection (Amendment) Act, 1994. Section 3 of the 1994 Amendment Act leaves no manner of doubt that all proceedings initiated by tenants under the 1921 Act in respect of lands owned by religious institutions or religious charities belonging to Hindu, Muslim, Christian or other religion and pending before courts or authorities or officers on coming into force of 1994 Amendment Act have abated and the tenants in respect of such lands have ceased to have any enforceable rights. By virtue of Section 3 of the 1994 Amendment Act, whatever rights and privileges the tenants had in respect of the lands mentioned therein stood determined. The expression 'every proceeding' is too wide to include the proceedings initiated by the tenants under Section 9 of the 1921 Act. [Paras 11, 12] [1216-D; 1217-A-C]

2. In view of Section 3 of the 1994 Amendment Act, the application made by the tenant-defendants under Section 9 of the 1921 Act which is said to be pending before the trial court does not survive and by operation of law that application has abated. It is strange that when Second Appeal was heard by the High Court, none of the

parties brought to the notice of the Single Judge of the High Court the provisions of the 1994 Amendment Act. In the Review Petition, the provisions of the 1994 Amendment Act were expressly referred to, but the single Judge referred to Section 2 only and did not advert to Section 3 at all. [Para 13] [1217-D-F]

3. The requirements of Section 3 of the 1994 Amendment Act are fully met in the present case but this aspect was not considered by the High Court on both occasions, while disposing of Second Appeal as well as Review Petition. The Interlocutory Application made by tenant-defendants under Section 9 of the 1921 Act has abated by operation of law and does not survive for consideration by the trial court. By virtue of Section 3 of the 1994 Amendment Act all rights and privileges (including the right to purchase the land from the plaintiffs under Section 9 of the 1921 Act) that the tenant-defendants had in respect of the suit property in terms of 1921 Act had been extinguished and ceased to be enforceable. [Para 14] [1217-G-H; 1218-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2232-2233 of 2002.

From the Judgment and Order of the High Court of Madras dated 23.9.1998 in Second Appeal No. 640 of 1986 and dated 28.4.1999 in Review Application No. 31 of 1999.

J.M. Khanna, Col. S.B. Kumar for the Appellant.

K.K. Mani, Abhishek Krishna, S.A. Saud, Mohd. Pravez Dabas, Shuaibuddin, Shakil Ahmed Syed fo the Respondents.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. We have heard learned counsel for the parties.

A 2. The present appellant – Tamil Nadu Wakf Board –
 alongwith Aminjikarai Mosque and Burial Ground represented
 by its Secretary (hereinafter referred to as 'plaintiffs') filed a suit
 for a declaration that the suit property was a Wakf property and
 for directing S.A. Rasool, since deceased and now represented
 B by his legal representatives, who are respondent Nos. 2, 4, 5(i)
 to (iii), 6, 8 and 9, referred to as the legal representatives of
 the original defendant, to hand over vacant possession of the
 suit property to the plaintiffs.

C 3. The case of the plaintiffs was that the suit property (land
 and superstructure) was a Wakf property known as Aminjikarai
 Mosque and burial ground. The suit property had been
 surveyed and published in the Fort St. George Gazette on May
 20, 1959 and the said notification had not been questioned by
 any one. The suit property was leased out to the father of the
 D original defendant by the then Muthavalli in 1921. Earlier the
 original defendant paid rent to then Muthavalli but thereafter no
 rent had been paid and he asserted his title over the property.

E 4. The legal representatives of the original defendant set
 up the defence that they were governed by Madras City Tenants'
 Protection Act, 1921 (for short, '1921 Act') as amended from
 time to time and in the absence of any notice under Section
 11 of the 1921 Act, the suit was not maintainable. It was their
 case that the superstructure did not belong to the Wakf and,
 F therefore, the Wakf Board was not the owner of the
 superstructure. They further stated that they had made an
 application under Section 9 of the 1921 Act for sale of the land
 on which superstructure had been built by their predecessor in
 title and as lessees they were entitled to purchase the land from
 G the plaintiffs.

H 5. On the basis of the pleadings of the parties, diverse
 issues were framed. The parties let in their evidence. After
 hearing the parties, vide judgment and decree dated July 16,
 1981, the trial court decreed the plaintiffs' suit.

TAMIL NADU WAKF BOARD v. SYED ABDUL 1215
QUADER & ORS. [R.M. LODHA, J.]

6. The legal representatives of the original defendant preferred an appeal challenging the judgment and decree of the trial court. The first appellate court, by its judgment dated February 22, 1984, dismissed the appeal and affirmed the decree passed by the trial court. As regards superstructure, the legal representatives of the original defendant were allowed to remove it. A
B

7. The legal representatives of the original defendant preferred Second Appeal before the High Court. The High Court, after hearing the parties, by its judgment dated September 23, 1998, allowed the Second Appeal and set aside the judgment and decree of the two courts below and remanded the matter to the trial court to proceed further with the application made by the legal representatives of the original defendant under Section 9 of the 1921 Act. C
D

8. The plaintiffs filed a Review Petition seeking review of the judgment dated September 23, 1998. In the Review Petition, it was brought to the notice of the High Court that by virtue of Section 3 of the Madras City Tenants' Protection (Amendment) Act, 1994 (for short, '1994 Amendment Act'), the rights and privileges of the legal representatives of the original defendant had ceased to be enforceable and their application under Section 9 of the 1921 Act had abated. E

9. The Review Petition was dismissed by the High Court on April 28, 1999. This is how the present Civil Appeals, by special leave, have arisen. F

10. Section 9 of the 1921 Act, to the extent it is relevant, reads as under :

"SECTION 9. APPLICATION TO COURT FOR DIRECTING THE LANDLORD TO SELL LAND – (1)(a)(i) 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 G
H

A Cause Courts Act, 1882, taken by the landlord may, within
 one month of the date of the publication of Madras City
 Tenants Protection Amendment Act, 1979 in the Tamil
 Nadu Government Gazette or of the date with effect from
 B or village in which the land is situate 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 and specified in the application.

C xx xx xx xx”

11. 1921 Act came to be amended by the 1994
 Amendment Act. Section 3 of the 1994 Amendment Act reads
 as under:-

D “Section 3. Certain pending proceedings to abate.-Every
 proceeding instituted by a tenant in respect of any land
 owned by any religious institution or religious charity
 belonging to Hindu, Muslim, Christian or other religion and
 pending before any court or other authority or officer on the
 E 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 principal
 Act, as amended by this Act, in respect of such land, abate,
 and all rights and privileges which may have accrued to
 F 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:

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

H

12. The provision contained in Section 3 of the 1994 Amendment Act leaves no manner of doubt that all proceedings initiated by tenants under 1921 Act in respect of lands owned by religious institutions or religious charities belonging to Hindu, Muslim, Christian or other religion and pending before courts or authorities or officers on coming into force of 1994 Amendment Act have abated and the tenants in respect of such lands have ceased to have any enforceable rights. By virtue of Section 3 of the 1994 Amendment Act, whatever rights and privileges the tenants had in respect of the lands mentioned therein stood determined. The expression 'Every proceeding' is too wide to include the proceedings initiated by the tenants under Section 9 of the 1921 Act.

13. In view of Section 3 of the 1994 Amendment Act, the application made by the legal representatives of the original defendant being Interlocutory Application No. 16520 of 1973 under Section 9 of the 1921 Act which is said to be pending before the trial court does not survive and by operation of law that application has abated. It is strange that when Second Appeal was heard by the High Court, none of the parties brought to the notice of the learned Judge the provisions of the 1994 Amendment Act. In the Review Petition, the provisions of the 1994 Amendment Act were expressly referred to but the learned single Judge referred to Section 2 only and did not advert to Section 3 at all. The omission to consider Section 3 of the 1994 Amendment Act has rendered the impugned judgment and impugned order legally unsustainable.

14. The requirements of main Section 3 of the 1994 Amendment Act are fully met in the present case but unfortunately this aspect was not considered by the High Court on both occasions, while disposing of Second Appeal as well as Review Petition. The Interlocutory Application No. 16520 of 1973 made by the legal representatives of the original defendant has abated by operation of law and does not survive for consideration by the trial court. The central reason of the

- A impugned judgment dated September 23, 1998 had been the pendency of the application made by the legal representatives of the original defendant under Section 9 of the 1921 Act but that reason noted in the impugned judgment even did not exist on that date in view of Section 3 of the 1994 Amendment Act.
- B As noted above, by virtue of Section 3 of the 1994 Amendment Act all rights and privileges (including the right to purchase the land from the plaintiffs under Section 9 of the 1921 Act) that the legal representatives of the original defendant had in respect of the suit property in terms of 1921 Act had been extinguished and ceased to be enforceable.
- C

15. It is not possible to sustain the impugned judgment dated September 23, 1998. As a result of this, the order dated April 28, 1999 also has to go.

- D 16. We, accordingly, allow these Appeals and set aside the impugned judgment dated September 23, 1998 and the order dated April 28, 1999. Second Appeal No. 640 of 1986 titled "*Kathija Bi & Ors. Vs. The Tamil Nadu Wakf Board & Others*" is restored to the file of the Madras High Court for fresh hearing and disposal in accordance with law.
- E

17. Since the matter is very old, we expect the High Court to hear and decide the Second Appeal expeditiously and preferably within six months of the receipt of the order of this Court. No costs.
- F

B.B.B.

Appeals allowed.