

S.T. Daniel Vs. Y. Davidson

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Court : Chennai

Decided On : Mar-05-1987

Reported in : AIR1988Mad357

Judge : Sengottuvelan, J.

Acts : Tamil Nadu Buildings (Lease and Rent, Control) Act, 1960 - Sections 13

Appeal No. : S.A. No. 1520 of 1986

Appellant : S.T. Daniel

Respondent : Y. Davidson

Advocate for Def. : R. Sengottian, Adv.

Advocate for Pet/Ap. : R. Alagar, Adv. for ;Y.K. Rajagopal, ;A. Venkatesan and ;A. Vijayakumar, Advs.

Judgement :

1. The question of law that arises for decision in the second appeal is whether G.O. Ms. No. 2000, Home, dated 168-1976, by which the State of Tamil Nadu had exempted the buildings owned by the Hindu, Christian and Muslim religious public trusts and public charitable trusts from the operation of the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960, is applicable to a case where the tenant of a property of a religious institution had filed a suit against his

sub-tenant for delivery of possession. In the present case, the respondent who was a tenant in respect of the suit premises belonging to the Home Church, Nagarcod, filed the suit, O.S. 527 of 1984 on the file of the Principal District Munsif of Padmanabhapuram for recovery of possession and arrears of rent. In the plaint it is alleged that since the suit property is the property of the Church, the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act do not applying the appellant here in, the sub-tenant, raised several contentions, one of which is that the Rent Control Act is applicable to the present case and the suit is not maintainable, but he did not specifically raise the plea that the suit is barred by virtue of the provisions contained in the Rent Control Act. The learned District Munsif passed a decree for possession against which an appeal was filed in AS 35 of 1985 on the file of the learned Subordinate Judge of Padmanabhapuram and the learned Subordinate Judge also concurred with the findings of the trial Court and dismissed the appeal.

2. In this second appeal, Mr. R. Alagar, learned counsel for the appellant raised a point of law that G.O.Ms. No. 2000, Home dated 16-8-1976 is not applicable to the present case, since the suit is filed, not by the religious institution, but by a tenant under the religious institution. No other point is urged in the second appeal.

3. In support of his contention, Mr. Alagar relied upon a decision of a Bench of this Court reported in *Globe Theatres Ltd v. State of Madras*, (1961) 1 M LJ 85, wherein, this Court, while considering the effect of an exemption granted by the State Government under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act observed as follows : -

' finally we should refer to two contentions raised by Mr. Rajah Iyer, learned counsel for the appellant, which we are not able to fully appreciate. One is that the ground on which, exemption can be granted by the Government under S. 13 should be a ground relating to the building, as such, and not relating to the owner of the building. It is difficult for us to conceive of a case where the ground can have relation to the building without having relation to the owner of the building, because, it is the owner who seeks the exemption. The building itself does not. The Act itself is full of -provisions including grounds on which eviction can be

obtained, which are personal either to the landlord or to the tenant as for example, a bona fide requirement for occupation, subletting, willful default in payment of rent etc., Mr. Rajah Iyer illustrate the principle which he was advancing more us.'

The order of exemption which came to be considered in the above decision is not available and hence it is not possible to ascertain under what context the above observation was made. Perhaps an order of exemption was granted by the State Government from the operation of the provisions of the Rent Control Act, in respect of the theatre called New Globe owned by a particular individual and proceedings were started by the transferee from the original owner. The Bench observed that the exemption cannot be conceived as one fig to the owner alone. The said observation is not, in any way, useful in considering G.O. Ms. No. 2000 Home, dated 16-8-1976, where under the Government specifically exempts all the buildings owned by the Hindu, Christian and Muslim public religious trusts and public charitable trusts. 'The Government Order does not state that the exemption relates to the buildings owned by such trusts in the possession of the trustees. As such the Government Order applies to all buildings, owned by the above said trusts. An identical question came to be considered by a single Judge of this Court in Sivaprakasam v. Munuswami Naicker, : (1982)2MLJ109 wherein it has been held that 'buildings belonging to the temples and trusts had been exempted from the purview of the act and it did not depend upon the person, filing the application for eviction, It was the property that was exempt from the act, and not the person.' The learned single Judge held that, the Government Order is applicable to proceedings started by a tenant of a trust property against a sub-tenant.

4. The wording of G.O. No. 2000 Home, 'dated 16-8-1976 clearly indicates that the State Government exempted only buildings owned by Hindu, Christian and Muslim religious public trusts and public charitable trusts, and not any person concerned with such buildings belonging to the above said trusts. In view of the unambiguous terms contained in the Government Order, I have no hesitation in rejecting the, contention of Mr. Alagar that cannot be.

5. In this connection, it has to be noted that the present appellant who is a tenant, in an earlier Rent Control proceedings, filed by the respondent against him, took

the plea that the Rent Control petition is not maintainable - in view of the above said Government Order. The said contention was accepted and the Rent Control proceedings were dismissed reserving liberty to the respondent to file a suit. While it may not amount to an estoppel against the appellant to raise the present plea on the principles contained in *Palaniapa Chettiar v. Parvathi Bai*, : AIR1972 Mad52 , yet, such a plea coming from the appellant will have to be discountenanced on merits.

6. In the result, the second appeal is dismissed. However, there will be no order as to costs.

7. Appeal dismissed.

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