

S. Ganapathi Vs. N. Kumaraswami

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Court : Chennai

Decided On : May-02-1975

Reported in : AIR1975Mad383; (1975)2MLJ171

Judge : Gokulakrishnan, J.

Acts : [Limitation Act, 1963](#) - Sections 5 and 29(2); Tamil Nadu Buildings (Lease and Rent Control) Act, 1960

Appeal No. : C.R.P. No. 3148 of 1974

Appellant : S. Ganapathi

Respondent : N. Kumaraswami

Advocate for Def. : K. Govindarajan, Adv. for ;M.K. Venataswami and A. Sivaji, Adv.

Advocate for Pet/Ap. : K.J. Chandran, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Gokulakrishnan, J.

1. The tenant is the petitioner herein. The respondent filed R. C. O. P. 559 of 1971, on the file of the First Additional District Munsif (Kent Controller) Madurai, for eviction of the petitioner on the ground of wilful default in the payment of rent. The Rent Controller found that the petitioner herein has committed wilful default in the payment of rents and on that ground, ordered eviction, giving the petitioner herein three months time for vacating the premises. Aggrieved by the decision of the Rent Controller, the petitioner herein presented a civil miscellaneous appeal before the Subordinate Judge of Madurai. Since there was a delay of 16 days in preferring the said appeal against the order of eviction, the petitioner herein filed I. A. 353 of 1973 along with the said appeal, under Section 5 of the Limitation Act to condone the delay in filing the appeal. Following the principles laid down by this court in the decision reported in Eswaran v. Palaniammal, 1974 TLNJ 380 to the effect that Section 5 of the Limitation Act cannot be invoked by the Rent Controller and the Appellate authority under Act 18 of 1960 since they are not courts, but only persona designata, the Subordinate Judge dismissed the application. Aggrieved by the said decision of the Subordinate Judge, the tenant has preferred this revision petition.

2. The only question that has to be decided in this civil revision petition is whether Section 5 of the Limitation Act is applicable for condoning the delay in preferring an appeal against the order of the Rent Controller.

3. Mr. K. J. Chandran, the learned counsel appearing for the petitioner, herein, submitted that the Rent Controller, or, in any event, the appellate authority is not a persona designate, but is a court. The learned counsel further contended that Section 5 of the Limitation Act read with Section 29(2) of the said Act clearly gives the power to the appellate authority to condone the delay in preferring the appeal. On the other hand, the learned counsel appearing for the respondent, submitted that neither the Rent Controller nor the appellate authority can be construed as a court but they are only persona designata and as such neither Section 5 nor Section 29(2) of the Limitation Act will apply for condonation of the delay. Both the counsel cited number of decisions in support of their respective contention, which I will deal with presently.

4. Sub-section (3) of Section 2 of the Tamil Nadu Buildings (Lease and Rent Control) Act XVIII of 1960, as amended by Act XXIII of 1973, defines 'Controller as meaning-

'any person appointed by the Government, by notification, to exercise the powers of a Controller under this Act for such area as may be specified in the notification.' Section 23(1)(a) of the Act states- 'The Government may, by general or special order notified in the Tamil Nadu Government Gazette, confer on such officers and authorities for the purposes of this Act, in such areas and in such classes of cases as may be specified in the order'.

Section 23(1)(b) states-

'Any person aggrieved by an order passed by the Controller may, within 15 days from the date of such order prefer an appeal in writing to the appellate authority having jurisdiction. In computing the 15 days aforesaid the time taken to obtain a certified copy of the order appealed against shall be excluded.

Dealing with more or less identical provisions in the Kerala Buildings (Lease and Rent Control) Act (2 of 1965) a Full Bench of the Kerala High Court opined in *Fernandez v. Umma* : AIR1974 Ker162 that the appellate authority is a persona designata and as such neither Section 5. nor Section 5 read with Section 29(2) of the Limitation Act will apply for condoning delay in filing appeals. The Full Bench observed- 'Even if the power under Section 5 were to be read into special local law by reason of the provisions of Section 29 of the Limitation Act, that power is exercisable only by courts and not by tribunals or other authorities such as the appellate authority in this case.'

In further dealing with Section 18 (1) (b) of Kerala Act 2 of 1965, which is akin to Section 23 of the Tamil Nadu Act, the Full Bench observed-

'The provisions of Section 18 (1) (b) therefore show that the Kerala Buildings (Lease and Rent Control) Act, was meant to be a self-contained Code in the matter of prescribing the periods of limitation and granting exemption therefrom.'

Thus it is clear from the abovesaid decision that the appellate authority constituted under the Rent Control Act is only a persona designata and that the provisions of the Limitation Act cannot be invoked before such authorities.

5. In *Abdul Wahid v. Abdul Khader* AIR 1947 Mad 400, Yahya Ali J. held that District Judges and Subordinate Judges invested with the powers of appellate authorities under Section 12 of the Madras Buildings (Lease and Rent Control) Act, (XV of 1946), by notification issued under that section function as persona designata and not as courts subordinate to the High Court and that application for transfer of appeal before such authority cannot therefore be maintained in the High Court

6. To the same effect, Clark J. has held in *Chinniah Thevar v. Badsha*, AIR 1948 Mad 439, that a subordinate Judge notified under Section 12 of the Act as the appellate authority, is appointed as persona designata and not as a court and as such he is not a 'court' subordinate to the High Court for the purposes of Section 115 C. P. Code.

7. In *Easaran v. Palaniammal* 1974 TNLJ 380, N. S. Ramaswami J. has held that Sections 5 and 29 of the Limitation Act will not apply either to rent control proceedings or to the appeal therefrom and that the authorities constituted both as Rent Controller and appellate authority are persona designata, and not as courts.

8. Mack J. has clearly held in *Rajam Iyer v. Pavanambal*, AIR 1949 Mad 787 that the appellate authority constituted under Section 12 (1) of the Act XV of 1946 is a persona designata and not a court subordinate to the High Court. .

9. In *Nityanand Joshi v. Life Insurance Corporation of India* : (1969)IILLJ711SC and *Athani Municipality v. Labour Court, Hubli* : (1969)IILLJ651SC , the Supreme Court held that Article 137 of the Limitation Act (XXXVI of 1963) cannot be invoked for an application under Section 33-C(2) of the Industrial Disputes Act of 1947, The Supreme Court observed-

'The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than courts, such

as a quasi-judicial tribunal, or even an executive authority. An Industrial Tribunal or a labour court dealing with applications or reference under the Act are not courts and they are in no way governed either by the Civil Procedure Code or the Criminal Procedure Code.'

In *Sankar v Buvanambal Animal* : AIR1971 Mad368 . a Division Bench of this Court, to which I was a party, held that a Rent Controller appointed as per the provisions in Section 2(3) of the Rent Control Act is a persona designata. No doubt, in this Bench decision, we have not considered the question as to whether the appellate authority constituted as per Section 23 of the Act is a persona designata, or not.

10. In *Venugopal v. Third Judge Small Cause Court, Mad.* AIR 1949 Mad 776. a Division Bench of this court, dealing with the notification under Section 12 (1) (a) of Act XV of 1946, dated J-3-J948, and published in the Fort St. George Gazette, on 23-3-1948. which substituted the words 'Court of Small Causes' in place of the words 'the Chief Judge of the court of Small Causes' in the original notification, held that by such notification, only 'the court of Small Causes' was constituted, and, as such, it was intra vires and not a persona designata. But, in the case on hand, and under the provisions of the Tamil Nadu Act XVIII of 1960. by notification IT. I. No. 20006 (f) of 1972. published in the Tamil Nadu Government Gazette, extraordinary, part II. Section 1, dated 30-6-1972, at page 3, the Principal Subordinate Judge, Madurai, has been conferred with the powers of appellate authority for the purpose of the Act in respect of cases arising in the City of Madurai. It is significant to note that in *Venugopal v. Third Judge, Small Cause Court Madras*, AIR 1949 Mad 776, the words used in the Notification referred therein is 'the court of Small Causes' while as per the present Act, the power has been conferred upon the principal Subordinate Judge' according to the notification now in force. Thus, it is clear that the power is vested upon the Principal Subordinate Judge, and not upon the court, as the law stands as at present.

11. In *Pai'eeq Ahmed Sahib v. Istiaq Ahmed* , *Soinasundararn J.* dealing with Section 195(1) and (2) CrI. P. C., held that a complaint from a party in rent control proceedings for the offence of forgery etc. is not sustainable but there must be a

complaint by the court to the magistrate. The learned Judge observed-

'In view of the legislative intention clearly expressed in the sub-section there is every reason to include the Rent Controller and the appellate authority within the definition of the term 'court' as given in Section 195(a) Crl. P. C, as these tribunals have far greater trappings of a court than a Registrar or a Sub Registrar under the Indian Registration Act. Thus, Section 195(l) Crl. P. C. is a bar to the present proceedings. There must be a complaint by the court.'

I do not think the principle in the above decision can be applied to the present case. In that case 'appellate authority is construed as a court with reference to Section 195(2) Crl. P. C.

12. No doubt, a single Judge of the Andhra Pradesh High Court has held in *G. D. M. Rao v. Ranga Pansiah and Bros* : AIR 1975 AP13 , that Rent Controller acting under the Rent Control Act is a Court and the provisions of Section 5 of the Limitation Act are applicable to the proceedings before the Rent Controller under the Act. I am not inclined to follow this decision in view of the direct authority, both by a single Judge and by a Division Bench of our High Court to the effect that Rent Controller constituted under the Tamil Nadu Buildings (Lease and Rent Control) Act is only a personal designata, and not a court.

13. In *Central Talkies Ltd. v. Dwarka Prasad* : 1961 CriLJ740 the Supreme Court has held -

'The argument that the District Magistrate was a persona designata cannot be accepted. Under the definition of 'District Magistrate, the special authorisation by the District Magistrate had the effect of creating officers exercising the powers of a District Magistrate under the Eviction Act. To that extent, those officers would, on authorisation, be equated to the District Magistrate. A persona designata is a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character.... Persona designata are 'persons selected to act in their private capacity and not in their capacity as Judges'. The same consideration applies also to a well known officer like the District Magistrate, named by virtue of his office, and whose powers the

Additional District Magistrate can also exercise and who can create other officers equal to himself for the purpose of the Eviction Act.'

I do not think the principle enunciated in the above decision can be invoked in the present case to come to the conclusion that the Principal Subordinate Judge appointed as appellate authority by virtue of the notification under the Act, can be considered as a court, In the above decision, the Notification dealt with conferred on the Additional District Magistrate all or any of the powers of the District Magistrate under the Code or any law for the time being in force as the provincial Government may direct. In those circumstances, the Supreme Court held that 'District Magistrate' referred to in the Notification cannot be considered as *persona designata*. But, in our case, among the subordinate Judges at Madurai city, only the principal Subordinate Judge has been invested with the powers of appellate jurisdiction for the purposes of the Act by the Notification.

14. In contrast to the Full Bench decision of the Kerala High Court reported in *Fernandez v. Umma* : AIR1974 Ker162 , a Division Bench of the Calcutta High Court in *Imperial Bucket Co. v. Bhagwati Basak* : AIR1954 Cal520 , has held-

'The words 'suit, appeal or application' occurring in Section 29(2)(a) of the Limitation Act do not admit of any doubt or dispute. In this view, no reference to the preamble is necessary. Even if there was any doubt about this matter, the words must be construed on the principle, that the Limitation Act being an Act which takes away or, restricts the right to take legal proceedings must, when the language is ambiguous be construed strictly i.e., in favour of the right to proceed. The rules of construction do not justify the court in adding to the words 'suit, appeal or application' the words 'to courts.' In their plain meaning the words 'suit, or appeal' in Section 29(2)(a) refer to any suit or any appeal, be it filed in a court or before a '*persona designata*' '.

To the same effect is the decision rendered by a Division Bench of the Bombay High Court in *Vasanji Ghela and Co. v. State of Maharashtra* (1968) 22 STC 104. I am not inclined to follow the ruling in the above two decisions in view of the principle enunciated in *Fernandez v. Umma* : AIR1974 Ker162 .

15. There are number of cases wherein the courts including the Supreme Court sought to consider certain authorities as 'courts' on the powers conferred on such authorities, If a particular authority is invested with all the trappings of a court, the courts have come to the conclusion that such authority is a court. The State Government has power to invest the judicial functions upon such authorities which it creates. Thus, each case has to depend upon the nature and scope of the legislation which creates such authority.

16. As far as Bent Controller and appellate authority created under the Tamil Nadu Buildings (Lease and Rent Control) Act are concerned it is clear that such authorities are persona designata and legislation such as Limitation Act applicable to court' cannot be invoked in proceedings before such persona designata, N. S. Ramaswami J, in C. R. P. 1044 of 1974 D/- 12-8-1974, 1974 T. N. L. J. 380 has categorically held that appellate authority constituted under the Rent Control Act is a persona designata and as such Section 5 of the Limitation Act cannot be invoked before such authority. Further, the Act itself is competent and provides the period of limitation for preferring appeals including the right of the appellant to exclude the time taken to obtain the certified copy of the order sought to be appealed, for computing the period of limitation.

17. In view of the above discussion and the decisions referred, I am in complete agreement with the principle laid down by N. S. Ramaswami J. in C. R. P. No. 1044 of 1974 (Mad) (Easwaran v. Palaniammal).

18. In these circumstances, the civil revision petition is dismissed. There will be no order as to costs, Time to vacate three months.

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