

**Ponnuswami Vs. Sakthivel**

**Ponnuswami Vs. Sakthivel**

**SooperKanoon Citation :** [sooperkanoon.com/798201](http://sooperkanoon.com/798201)

**Court :** Chennai

**Decided On :** Oct-30-1987

**Reported in :** (1988)1MLJ313

**Appellant :** Ponnuswami

**Respondent :** Sakthivel

**Judgement :**

**David Annoussamy, J.**

1. The second appeal turns on the following question of law:

In view of the Amendment Act 2 of 1980 and its applicability to tenancies created before 3.3.1980, would not the appellant be entitled to the advantage conferred by the Act?

The case of the appellant is that the suit property is within the limits of the municipal town of Nagapattinam, that as per the Madras City Tenants Protection Amendment Act 19 of 1955, the Act could be extended to any municipal town with effect from such date as has been specified in the notification, that a notification was issued as per G.O. Ms. No. 4243 extending the Act to the Nagapattinam municipal town with effect from 20.11.1956, that the Madras City Tenants Protection Amendment Act, 1979 applies also to any municipal town from such date as may be specified in the notification, that there was no subsequent

notification cancelling the earlier notification, that the Act continues to apply without interruption to the Nagapattinam municipal town and that therefore he would be entitled to the benefit of the Act, which applies to all the tenancies created before 3.3.1980. In support of his contention the appellant would place before me a decision of the Division Bench of this Court in A.C. Jacob v. Venkatarama Gounder, L.P.A. Nos. 37 and 38 of 1977, dt. 28.6.1982, in which the benefit of the Amendment Act of 1979 has been conferred upon the tenant in the municipal town of Coimbatore, to which the Amendment Act, 1955 was extended on 13-3-1958, without any further notification after the Amendment Act 1979.

2. The stand taken by the learned Counsel for the respondent is that in pursuance of the Madras City Tenants Protection Act, 1955, a notification was issued by the Government on 20.11.1956 extending the Act to the Municipal town of Nagapattinam, that the Amendment Act, 1979 provides that the State Government may by notification extend the Act with effect from such date as may be specified in the notification to any municipal town, that no such notification has been issued under the Amendment Act, 1979, that in the absence of such notification the Act would not apply to the municipal town of and that the appellant cannot claim the benefit of the Act on the ground that the tenancy was created before 3.3.1980.

3. In this case, it is seen that under the Amendment Act, 1955, the Act could be made applicable to a municipal town by way of notification and that the same provision exists in the Amendment Act, 1979. A notification was in fact issued in the case by the Government as per G.O. Ms. No. 4243 applying the Act to the Nagapattinam Municipal town with effect from 20.11.1955. The only question therefore is whether the notification issued in 1956 would continue to have effect after the Amendment Act, 1979. The answer to this question is to be found in Section 18 of the Tamil Nadu General Clauses Act, 1891, which reads as follows:

References to provisions in Act repealed and re-enacted: Where an Act repeals and re-enacts, with or without notification, all or any of the provisions of a former Act, references in any other Act to the provisions so repealed shall be construed as references to the provision's so re-enacted, and if notifications have been published, proclamations or certificates issued, powers conferred, forms

prescribed, local limits defined, offices established, orders, rules and appointments made, engagements entered into, licence or permits granted, and other things duly done, under the provisions, so repealed, the same shall be deemed, as far as the same are consistent with the provisions so re-enacted, to have been respectively published, issued, conferred, prescribed, defined, established, made, entered into, granted or done under the provisions so re-enacted.

As per the above provision, notification issued in 1956 prior to the Amendment Act, 1979 would continue to have effect.

4. Learned Counsel for the respondent pointed out that such continuance is not automatic, that it was subject to the condition that the notification is consistent with the re-enacted provisions and that such condition was not fulfilled in the present case. But the learned Counsel for the respondent did not show how that condition was not fulfilled. It can be seen from the provisions of Sub-clause (2) of Section 1 of the Amendment Act, 1955 as well as that of the Amendment Act, 1979, that they both include the category of Municipal town. The only difference is that the latter Amendment Act contains other categories of urban entities, not included in the earlier Act. Therefore, the notification issued in 1956 in pursuance of the Amendment Act 1955, extending the Act to the Municipal town of Nagapattinam is not repugnant to the provisions of the Amendment Act, 1979. No doubt, as per the provisions of the sub-clauses of Section 1 of the Act, as it stands amended, the provisions of the Act would apply to all the tenancies of land created before 3.3.1980, whereas as per the notification dated 20.11.1956 read with Sub-clause (3) of Section 1 of the Amendment Act, 1955 the provisions would apply only to tenancies created prior to the date of notification. The law-maker was fully aware of the position and has expressly provided that the Act would apply to tenancies created before 3.3.1980. That was done intentionally as it could be gathered from paragraph 4 of the Statement of Objects and Reasons published in the Gazette on 29.10.1979, along with the Madras City Tenants Protection Amendment Bill No. 49 of 1979, which became the Act of 1979. That paragraph 4 reads as follows:

It has also been decided to amend the said Act so as to secure its application over all the areas from an uniform date. It has further been decided that the crucial date

shall be the date of publication of the proposed amendment Act in the Tamil Nadu Government Gazette, in respect of the tenancies in the areas to which the provisions of the said Act have already been extended and in respect of tenancies in the areas to which the provisions of the said Act are proposed to be extended in future, the crucial date will be the date on which the said Act is extended to such areas.

It is clear from the above that fresh notification will be issued only in respect of areas to which the Act is to be extended in future and that so far as the areas to which the Act has already been extended there will be no such notification and the provisions of the Act would apply from the uniform date, viz., the date of publication, i.e., 3.3.1980. Such being the position, there is no inconsistency whatsoever between the provisions of the Amendment Act, 1979 and the notification already issued on the basis of the Amendment Act, 1955. The matter was so obvious that the Division Bench in L.P.A. Nos. 37 and 38 of 1977, dt. 28.6.1982, did not go in detail into the question and held that the notification issued under the Amendment Act 1956 in respect of the township of Coimbatore would continue to ensure. The point of law being settled as above. I shall now turn to the facts to find out what are the reliefs to be given to the parties.

5. The appellant is a tenant in respect of a non-residential building in Nagapattinam municipal town. A suit was instituted on 30.8.1980 by the landlord-respondent herein for ejectment of the defendant-appellant from the suit property leased out to him. In this proceeding the tenant-defendant filed a petition under Section 9 of the City Tenants Protection Act, 1921. The question which arose before the trial Court was whether the tenancy started before 5.12.1956 or after that date. The landlord contended that the tenancy commenced after that date and that the tenant was not entitled to the benefit of that Act. The contention of the tenant on the contrary was that the tenancy started in the year 1955 itself and that he was entitled to the benefits of that Act. The trial Court found that the tenancy started prior to 5.12.1956 and that the tenant was entitled to the benefit of the Act and accordingly dismissed the suit. As far as the petition filed by the defendant-tenant was concerned, the trial Court rejected the same on the ground that the suit itself was not properly instituted and also on the ground that the details of

valuation were not given by the tenant. The landlord appealed against the dismissal of the suit and the tenant against the dismissal of his petition under Section 9 of the Tamil Nadu City Tenants' Protection Act, 1921, preferred appeals. The first appellate Court allowed the appeal preferred by the landlord holding that the tenancy commenced after 5.12.1956 and that the tenant was not entitled to the benefits of the Act and for that reason dismissed the appeal under Section 9 filed by the tenant. The present second appeal is against the judgment of the first appellate Court allowing the suit of the plaintiff-landlord and the civil revision petition is against the dismissal of the petition under Section 9 by the defendant-tenant.

6. In this second appeal the tenant realised that it was immaterial whether the tenancy started before 5.12.1956 or thereafter, because he became entitled to the benefits of Act by virtue of the Amendment Act 1979, which is applied to all tenancies created before 3.3.1980, the date on which the Amendment Act was published in the Gazette, as per Section 1(3) of the said Act. The fact that the tenancy started soon after 5.12.1956 and therefore long before 3.3.1980 is not disputed by the respondent-landlord. It is on that question of law that the second appeal was admitted. Now it is held that the notification issued in 1956 (20.11.1956) is still valid and that the Act applies to all tenancies created before 3.3.1980 in the Municipal town of Nagapattinam. Hence, the tenant is entitled to the benefit of the Act and the suit of the landlord has to be dismissed. Consequently, the second appeal preferred by the tenant is to be allowed.

7. As far as the petition under Section 9 is concerned, it is clear from that section that it is unnecessary for the tenant to give the details of valuation in the petition itself and this point is fairly conceded by the learned Counsel for the respondent. It is also well-settled that even if the suit for ejectment is defective in any manner, once the suit for ejectment has been filed by the landlord, the right of the tenant to file an application under Section 9 remains unaffected. This point of law is not disputed by the learned Counsel for the respondent and it is therefore unnecessary to, mention the authorities on this point. The trial Court is therefore directed to take up the petition under Section 9.

8. In the result, the second appeal is allowed and the suit of the landlord is dismissed. The civil revision petition is allowed, the orders of both the Courts below are set aside and the trial Court is directed to take up the petition under Section 9 for early disposal. There will be no order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**