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Court : Chennai

Decided On : Jan-30-1981

Reported in : AIR1982Mad3

Judge : Mohan, J.

Acts : [Constitution of India](#) - Article 226; Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 10

Appeal No. : W.P. No. 4735 of 1979

Appellant : R. Mohmood and anr.

Respondent : Ebrahim Saifuddin and Co. and ors.

Advocate for Def. : M. Kumaraswami, Adv.

Advocate for Pet/Ap. : V. Narayanaswami, Adv.

Judgement :

ORDER

1. The writ petition is for certiorari to quash the proceedings in M. P. No. 2329 of 1978 in E. P. 485 of 1978 dated 33-7-1979 in the file of the Rent Controller, (6th Judge. Small Cause Court). Madras.

2. The facts are briefly as under -the first respondent was a tenant of the father of the first petitioner, H. Y. Mahmood, in respect of a portion privately marked as No.

5-B Sembudoss St.. Madras 1. comprised in Municipal No. 21 Errabalu Chetti St., Madras 1. since renumbered as No. 12 Errabalu Chetti St., Madras 1. During his lifetime, he filed H. R. C. No. 4254 of 1962 against the first respondent for eviction under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act. 1960 on the ground of wilful default in payment of rent and also sub-letting of the premises to the second respondent, who has also been impleaded as a party to the proceedings. The matter was contested by both the respondents and ultimately an order of eviction was passed by the Rent Controller on 9-12-1964. Aggrieved by the order of eviction, the matter was taken up in appeal in H. R. A. No. 60 of IVA. which was dismissed on 30-9-1964. Thereafter a revision in C. R. P. No. 2629 of 1964 (Ebrahim Saifuddin and Co. v. Mohmood) was also filed in this court. That was dismissed on 15-11-1966 granting six months' time to vacate. Thus the order of eviction has become final.

3. Thereafter, the first respondent filed O, S. No. 1551 of 067 on the file of the City Civil Court Madras. During the pendency of that suit, he obtained an order of injunction restraining the petitioners herein, from executing the order of eviction passed in HRC Number 4254 of 1962. Ultimately that suit was dismissed on 20-11-1966. Thereafter the second respondent claiming to be the sole proprietrix of Ebrahim Saifuddin & Co., filed O.S. No. 58 of 1969, before the City Civil Court, Madras, for a declaration that she was a tenant of the premises and also for an injunction restraining the landlords from executing the order in HRC No. 4254 of 1960. After contest, that suit was dismissed on 4-12-1974. A. S. No. 126 of 1976, an appeal preferred against the same, has also been dismissed and a further second appeal in S. A. No. 1832 of 1976. Shrishi Mohamedaly v. Mohmood, preferred to this Court was also dismissed.

4. It requires to be noted at this stage that since the father of the petitioners died, the present petitioners were brought on record as his legal representatives. After all these proceedings, when E. P. No. 485 of 1978 was filed to execute the order of eviction a contention was urged that by reason of a partition dated 30-3-1972, under which the premises had been allotted to the daughters of the said Mohamed, the petitioners herein had no interest whatever and therefore at their instance eviction would not lie. Earlier in E. A. 1510 of 1977 when the sharers

under the partition deed sought to bring themselves on record, the present respondents objected to the same on the ground of lack of privity of contract and that was dismissed. During these execution proceedings, M. P. 2329 of 1978, under Section 47 C. P. C. was filed stating that the order of eviction could not be executed. The learned Judge of the Small Cause Court, Madras, by an order dated 30-7-1979. allowed the same for reason set out in the order, to which I will make reference later. It is under these circumstances, the present writ petition came to be preferred.

5. After notice, the respondents entered appearance. I asked the learned counsel for the respondents, as to how a valid order of eviction which came to be passed as early as 9-12-1963 could be set at naught by raising such kinds of objection. More so. when the order of eviction had become final and two suits challenging the said order of eviction had also been dismissed. It was his contention that if proper parties file execution petitions, he could have no objection, but since the present writ petitioners have no subsisting interest, it was well open to him to contest. Then I put the query whether the respondents are prepared to deliver possession to the proper parties, thereby obeying the order of eviction. He further raised two other objections, which according to him ought to be decided by the executing Court. They are (1) Whether the execution is barred; and (2) Whether the descriptions of property No. 21 Errabalu Chetti St. and Municipal door No. 5 B. Sembudoss St, are one and the same and the order of eviction passed in HRC No. 4254 of 1962, will take within it these two properties. Therefore, according to him, the impugned order may be set aside and remitted to the executing Court for fresh determination on these aspects.

6. One thing that would strike any one even if there is a cursory glance at the facts is that an order of eviction passed in 1963 has been successfully kept in abeyance by some proceedings or other till this date. Therefore, I thought if Courts are to function ' effectively to grant redress in cases where parties approach the Courts with the genuine grievance, such a relief should be afforded at the earliest. So, instead of setting aside the impugned order, I directed the Court below to give a finding on both these questions above referred to, and the parties were given liberty to let in such evidence as they might deem fit. Accordingly, findings have

now been rendered by the learned Judge of the Small Cause Court. Madras, by his order dated 20-12-1980, holding against the respondents on both the questions.

7. It is at this stage the matter was taken up for hearing. Learned counsel for the petitioners urges that in view of the findings nothing else survives excepting to pass an order of eviction. Learned counsel for the respondents would state first and foremost that this Court, exercising writ jurisdiction under Article 226 of the [Constitution of India](#), has no power to call for finding. Exercising certiorari jurisdiction it can remove merely an offending order, but A cannot call for findings. In support of this submission he relies upon certain decisions which are Syed Yakoob v. Radhakrishnan, : [1964]5SCR64 , Prem-sagar v. S. V. Oil Co., AIR 1966 SC 111 and Babhutmal v. Laxmibai, : AIR 1975 SC1297 . Not one of these decisions, in my considered view, could have any bearing whatever because they merely say that the scope of certiorari jurisdiction is to interfere in a case where an error of law is manifest as apparent on the face of the records. We are not on that question at all. I have already set out the reason for my calling for a riding. Even at the risk of repetition let me state that if the Courts are to be respected, a person who has obtained a valid order of eviction as early as in 1963, if he is to be denied the benefits under that order, no better course than to call for a finding would enable the party to obtain the relief. On the plea of mere technicalities if in spite of an order of eviction passed 17 years ago a landlord is to be driven from pillar to post and ultimately, the tenant having the last laugh, the Courts can hardly become the forums which would infuse confidence in the general public. Now that the findings are clearly against the respondents they have resorted to this kind of argument. Even otherwise, for my part, I see no reason as to why a High Court exercising constitutional power under Article 226 would be denied the power to call for a finding instead of itself taking evidence in relation to factual matters. Therefore, I reject this contention. The respondents have no other course except to comply with the order of eviction.

7A. Even the order dated 30-7-1979, suffers from a serious error, in that it distinguishes the ruling of this Court reported in Batheswaraswami Temple v. Padrinatha Chettiar, 1977 TLNJ 419, on the singular ground that the said ruling

relates to executable decrees for possession and the sale of property after the decree. Learned Judge seems to have been influenced by technicalities rather than the substance of the matter. It is well open to the landlords to execute the order though title had been transferred since they have to give vacant possession to the persons who are entitled to the property under the partition arrangement. This partition arrangement cannot concern the tenants at all and they cannot take advantage of the partition denying the landlords the fruits of the order of eviction. The ratio of the ruling cited above clearly applies to this case as well.

8. Yet another decision cited is *Mohamed Usman v. Labour Appellate Tribunal of India, Bombay*, : AIR1952 Bom443 wherein in a matter which arose under the Industrial Disputes Act it was held that on a petition for a writ of certiorari the High Court does not sit as a Court of appeal; it exercises supervisory powers conferred upon it by issuing high prerogative writs. The jurisdiction of the High Court is limited to quashing an order passed without jurisdiction or in contravention of the principles of natural justice. The High Court has therefore no power or jurisdiction to remand a matter to the Tribunal.

9. Even this decision cannot advance the case of the respondents because we are not on remand at all. The course adopted, viz. the calling for findings was adopted to the parties for effectuating an order of eviction, which had become final as conclusive between the parties.

10. Therefore, for all the above reasons, the writ petition is hereby allowed and the following order is made (1) The impugned, order D/- 30-7-1979 is hereby set aside; (2) the findings rendered by the 8th Judge, Small Cause Court Madras dated 20-12-1980 are accepted; and (3) The respondents will deliver possession of the premises forthwith No. costs.

11. Petition allowed.