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Court : Chennai

Decided On : Apr-19-2006

Reported in : (2006)2MLJ763

Judge : S.K. Krishnan, J.

Acts : Electricity (Supply) Act, 1948; Rent Control Act - Sections 10 and 10(2); Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 10, 10(1), 10(2), 10(3), 10(4), 10(5), 10(6), 10(7), 10(8), 10(9), 10(10), 14 to 16 and 29; Constitution of India - Article 12; Indian Companies Act, 1956

Appeal No. : C.R.P. (NPD) No. 2972 of 2001

Appellant : Raghavan and ors.

Respondent : The Metropolitan Water Supply and Sewerage Board Through Its Managing Director

Advocate for Def. : K.N. Pandian, Adv.

Advocate for Pet/Ap. : V. Raghavachari, Adv. for ;A.M. Krishnamoorthy, Adv.

Disposition : Revision allowed

Judgement :
ORDER

S.K. Krishnan, J.

1. Aggrieved by the order of the Subordinate Judge, Poonamallee passed in R.C.A. No. 12 of 1995, dated 29.3.2001 confirming the order of the Rent Controller, Poonamallee passed in R.C.O.P. No. 150 of 1985, dated 17.10.1994, the petitioners have come forward with this revision petition.

2. The petitioners are the legal representatives of one Sivalingam, who was the tenant under the Madras Metropolitan Water Supply and Sewerage Board, Madras, which filed a petition in R.C.O.P. No. 150 of 1985 under Section 10(2)(i) of the Rent Control Act for evicting the respondent/tenant from the premises.

3. Initially, the said Sivalingam was a tenant under the Corporation of Madras for the monthly rent of Rs. 20/- and after the formation of the respondent Board in the year 1978, the said premises was taken over by the Board. Since the said Sivalingam has committed default in paying the rent Rs. 20/- per month from 1.8.1978 to 1.9.1984 amounting to Rs. 1440/-, a notice was sent to the tenant asking him to vacate from the premises. Since the said notice was returned with an endorsement that no such person was available in the said address, the respondent has filed the petition in R.C.O.P. No. 150 of 1985 on the file of the District Munsif Court, Poonamallee. Subsequently, since the said Sivalingam died, his legal representatives, who are the revision petitioners herein, were impleaded.

4. Denying the averments made in the petition, the respondent filed a counter stating that there is no relationship of landlord and tenant between the petitioners and the respondent. The petitioners/tenants occupy the premises on the basis of their own right. The rent control act is not applicable to the suit premises as the premises is not situated within the municipal limit. Moreover, it is not a notified village. The rent controller has no territorial jurisdiction to hear the case. Hence, the petition is liable to be dismissed.

5. Based on the ground of wilful default committed by the petitioners in paying the rent, eviction was ordered by the Rent Controller and the same was confirmed by the appellate authority. Hence, the present revision by the petitioners.

6. The only point to be decided in this revision is whether the respondent can invoke the provisions of rent control act for evicting the petitioners or not.

7. Heard both sides.

8. The learned Counsel appearing for the petitioners vehemently contended on the following main points.

a. The Property does not belong to Corporation of Madras.

b. There is no jural relationship between the petitioners and the respondent.

c. The provisions of Rent Control Act are inapplicable.

d. The Rent Controller had no territorial jurisdiction over the property which is situated in Rajamangalam which is not in the limits of Municipal Town.

e. The disputed piece of land is vested with the Government which collects charges from the petitioners.

9. Based on the above points, the main and only contention of the learned Counsel appearing for the petitioner is that the in the case on hand as the landlord is the Government, the respondent cannot invoke the provisions of the Rent Control Act, when proviso to Section 10 of the Rent Control Act is very clear that a tenant, whose landlord is the Government cannot be evicted under the provisions of the Rent Control Act and therefore, neither the respondent nor the Courts below have no jurisdiction to evict the petitioners from the premises of the Government and in such circumstances, the orders impugned in this revision are liable to be set aside.

10. At this juncture, it is pertinent to see Section 10 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960:

Sub Section 1 to Section 10 : Eviction of Tenants:

(1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this Section or Sections 14 to 16.

Provided that nothing contained in the said Sections shall apply to a tenant whose landlord is the Government.

Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

11. From the above provision, it is clear that where the landlord is the Government, which cannot invoke the provisions of the Rent Control Act to evict the tenant.

12. In the light of the above, the question to be decided is whether the landlord is the Government and the respondent is the State within the meaning of the Article 12 of the Constitution of India or not.

13. In this regard, the learned Counsel would submit that the respondent Board performs the functions of the State, namely, providing of water and drainage facilities to the public, which is evident from the Government order issued in the year 1979, which clearly recites that all the works of the P.W.D and the Corporation of Madras with regard to water supply and drainage facilities have been transferred to the respondent Board.

14. Further, it is pointed out that the board was created under a statute and certain powers and duties were conferred on the Board. Moreover, the members of the Board are the Secretary to Government, who is vested with the power of provision of water facilities, Finance secretary and Member Secretary CMDA and Commissioner of Corporation of Madras.

15. It is also pointed out that like Tamil Nadu State Electricity Board, the respondent/board is also a State within the meaning under Article 12 of the Constitution of India.

16. In this regard, the learned Counsel relied on the following decision.

a. In Abdul Ahad Loand and Ors. v. Manager Govt. Woollen Mill and Ors. AIR 1979 J& K 57 the Full Bench of the Jammu and Kashmir High Court has held as follows:

'The Board is an authority invested by statute with certain power of State. It has the power of promoting co-ordinated development, generation, supply and distribution of electricity and for that purpose to make, alter, amend and carry out schemes under Chapter V. of the Electricity (Supply) Act, 1948... to make rules and regulations for carrying out the purposes of the Act, and to issue directions under certain provisions of the Act and to enforce compliance with these directions. The Board is also invested by the statue with extensive powers of control over Electricity Undertakings. The powers to make rules and regulations and to administer the Act is in substance the sovereign power of the State delegated to the Board. The Board is, in my judgment, 'other authority' within the meaning of Article 12 of the Constitution. IN Sukhdev Singh's case : (1975)ILLJ399SC (supra) it was opined (at p. 1342): The expression 'other authorities' in Article 12 is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India. The expression 'other authorities' will include all constitutional or statutory authorities on whom powers are conferred by law.

17. Therefore, it is contended that that the respondent Board is not an individual body and it cannot invoke the provisions of the Rent Control Act for evicting the petitioners from the premises.

18. Contrary to the arguments advanced by the learned Counsel appearing for the petitioners, the learned Counsel appearing for the respondent Board would submit that the board is an independent statutory body created under the statute.

19. For deciding the question whether the respondent Board is the State within the meaning of the Article 12 of the Constitution of India, the argument of the respondent counsel cannot be accepted, whereas the argument advanced by the learned Counsel for the petitioners can be accepted as his argument is in conformity with the ratio laid down by the Full Bench of the Jammu and Kashmi High Court, which elaborately dealt with the question of 'Other authorities' within the meaning of the Article 12 of the Constitution of India and the same is very relevant to the case on hand.

20. It is not disputed by both the sides that the premises in dispute belongs to the Government and no individual claims any title or ownership of that premises.

21. From the above, it is clear that the respondent Board is 'Other authority' within the meaning of the Article 12 of the Constitution of India and the premises in dispute belongs to the respondent Board. In such circumstances, the first proviso to Section 10 of the Rent Control Act clearly prohibits the respondent Board from invoking the provisions of the Rent Control Act.

22. One another contention raised by the learned Counsel appearing for the respondent Board is that since the Government by Notification dated 24.11.1976 exempts under Section 29 of the Rent Control Act only the buildings owned by all Government undertakings including Government Companies registered under the Indian Companies Act, 1956 and by all the Co-operative Societies from all the provisions of the said Act, but not the buildings owned by the Government and therefore, as the said notification, the respondent Board can invoke the provisions of the said Act.

23. Per contra, the learned Counsel appearing for the petitioners would submit that as per first proviso to Section 10 the Government cannot invoke the provisions of the Rent Control Act against a tenant in the building owned by the Government and also when the notification was issued by the Government under Section 29 of the Act exempting the buildings owned by all Government undertakings including Government Companies and Co-operative Societies from the all the provisions of the Rent Control Act, the respondent Board, in toto, has no authority or jurisdiction to evict the petitioners from the premises.

24. Section 29 of the Act reads as follows:

Notwithstanding anything contained in this Act, the Government may, subject to such conditions as they deem fit, by notification, exempt any building or class of buildings from all or any of the provisions of this Act.

25. No doubt, in exercise of the powers conferred under Section 29 of the Act, the Government, by notification, exempted the buildings owned by all the Government undertakings and Government Companies and Co-operative Societies from all the provisions of the said Act.

26. As rightly pointed out by the learned Counsel appearing for the petitioners that as per proviso to Section 10 and Section 29, the respondent Board cannot invoke the provisions of the said Act. However, as already decided above that the building is owned by the Government and the respondent Board is the 'other authority' within the meaning of the Article 12 of the Constitution of India, the respondent Board is barred from invoking the provisions of the said Act. In this view of the matter, the contention of the learned Counsel for the respondent Board cannot be accepted.

27. Further, it is vehemently contended by the learned Counsel for the Board that when the petitioners admitted that they are tenants under the respondent Board and the jurisdiction of the Courts below, now they cannot raise the plea of jurisdiction of the respondent Board as they are estopped from raising such new plea.

28. Further, it is submitted that admitting the jural relationship as landlord and tenant, the petitioners have paid rent to the Board and are enjoying the premises for the past 21 years and without paying any rent for the above said period, the petitioners now cannot say that they are not tenant under the Board nor the Board has no jurisdiction to initiate proceedings under the said Act.

24. In support of his contention, the learned Counsel appearing for the respondent/Board relied on a following decision.

25. In Om Sakthi Renergies Limited, Represented by its Managing Director Mr. M. Jayathirth v. Megatech Control Limited, Represented by its Managing Director Mr. N. Ramkhumar, Chennai and Anr. a Division Bench of this Court has held that if a party does not press the objection to the jurisdiction and allows trial to go on in the usual course on merits, he would be bound by his own conduct, and he should be deemed, in such circumstances, to have waived his objection as to jurisdiction.

26. On the contrary, the learned Counsel appearing for the petitioners would vehemently contend that though the petitioners have not raised the jurisdiction plea before the Courts below, it is not proper and correct to say that at the stage of revision by the learned Counsel for the Board is not squarely applicable to the case on hand for the reason that wherein the jurisdiction plea was with regard to place of suing, whereas in this case, the respondent Board, being 'other authority' has no jurisdiction to initiate eviction proceedings against the petitioners, who are in the building owned by the Government, in any Court or place.

28. Therefore, when the illegal act was enacted by the respondent Board either by inadvertently or otherwise, it is not proper and correct to expect that the petitioners should not raise such legal plea at the stage of revision as such plea was not raised at the initial stage. When we are governed by rule of law, there is no place for any kind of illegal act by anybody. If we permit an illegal act on the ground that that act was allowed initially and therefore, it cannot be set right at any stage, then such contention would question the very existence of the Act itself. Whatever be the illegal act by whoever might be, when such illegal act comes to be known, that should be set it right in accordance with law.

29. In the light of the above discussion, this Court is of the view that the respondent Board being other authority within the meaning of under the Article 12 of the Constitution of India cannot invoke the provisions of the Tamil Nadu Buildings (Lease & Rent)Control Act, 1960 against the petitioners for eviction from the building owned by the Government as per first proviso to Section 10 of the said Act.

For the reasons stated above, the revision is to be allowed setting aside the orders of the Rent Controller and the appellate authority as illegal. Accordingly, the

revision is allowed setting aside the orders impugned in this revision. No costs.

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