Dr. Gnanasekaran and Others Vs Sultan Mohideen and Another
K. Kumar Vs Sultan Mohideen, Amar Chand Kothari and Another

Court: Madras High Court

Date of Decision: Nov. 12, 2013

Citation: (2014) 1 LW 532

Hon'ble Judges: B. Rajendran, J

Bench: Single Bench

Advocate: A. Palaniappan, for the Appellant; A. Abdul Ravoof for Respondents 1 and 2 and Mr. P. Gopalan for Respondents 3 and 4 in CRP Nos. 2478, 2479 of 2012, for the Respondent

Final Decision: Dismissed

Judgement

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B. Rajendran, J.
With the consent of both sides, all the three revision petitions are taken up for disposal. These revision petitions are filed

challenging the orders of the Courts below concurrently directing the eviction of the revision petitioners/tenants on the ground of demolition and

reconstruction.

2. The respondents/landlords filed R.C.O.P. Nos. 980, 978 and 979 of 2005 respectively for eviction of the petitioners along with other tenants

on the ground of demolition and reconstruction. The petitions were decreed in their favour. Challenging the same, the tenants filed R.C.A. Nos.

469, 471 and 470 of 2010 respectively before the appellate authority under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for

short "the Act") which were dismissed, confirming the order of the learned Rent Controller.

3. The main ground of attack made by the learned counsel for the revision petitioners is that the respondents/landlords, just three weeks prior to

the judgment in the Rent Control Appeals sold the undivided share of the land to a third party, which was not brought to the notice of the appellate

court and the eviction order based on the bona fide requirement of the landlords at the time of filing of eviction will not enure to the benefit of the

subsequent purchaser. Therefore, the order of eviction is bad in law. His only requirement was that the subsequent event has to be taken note of,

because the landlords have parted the property and therefore, the property cannot be put in for eviction. In this connection, he would rely upon the

judgment of this Court in Arumuga Naicker (died) and Others Vs. T.C. Baladhandayuthapani and Another, for the proposition that after the

eviction, if the property has been sold, then the purchaser has to give an undertaking, which was not there. Therefore, in that particular case, it was

remitted back to the lower court for fresh consideration at least to that extent the Court has to take note of it. He would also rely upon judgment of

the Apex Court in Seshambal (dead) through L.Rs. Vs. Chelur Corporation Chelur Building and Others, for the proposition that date on which the

requirement arose has to be taken note of and has to be considered and considering that the Court has to definitely take note of the subsequent

event and the Court is entitled to mould the relief on the subsequent events. Therefore, the fact that admittedly the purchaser has come into record,

the petitions that have been filed earlier has lost its value and they have no legal right now and they have lost their right to contend before the

revision court.

4. The learned counsel for the respondents 1 and 2 would mainly contend that the landlords have not parted with the entire property, but only out

of the total property, have given the undivided share to the extent of 1322 sq. ft. and it is also not the entire sale, but it is a joint venture, where the

purchaser and the landlords have jointly come forward to develop the property. Therefore, the landlords have not parted the interest in toto in the

building. To augment the income, they did this, especially this was done subsequent to the order of eviction and pending R.C.A., as the matter has

been pending for a quite number of years, for which, the landlord cannot be put to fault. In this connection, they also relied upon the judgment of

this Court in N.S. Kandasami Nadar v. S.A. Selvaraj Nadar reported in 1980 TNLJ 251, wherein, after referring to various other judgments, it

was held that u/s 14(1)(b) of the Act itself subsequent sale will not affect the right of the parties. He would also rely upon the judgment of this

Court in Shunmugham and Others Vs. S. Satyanarayana Prasad, for the proposition that if the landlord sells the property, the sale is not invalid nor

will the order of eviction be deemed to lapse and the execution court is bound to execute the order at the instance of the successor-in-interest of

the landlord. That case is arising u/s 14(2)(b) of the Act. He would further rely upon the judgment of Hon''ble Mr. Justice P.R. Gokulakrishnan (as

he then was) in Manickam Chettiar v. Pasumponnal Achi reported in 1976 TNLJ 256 which was arising u/s 14(1)(b) of the Act, wherein, His

Lordship held that the subsequent sale will not in any way affect the landlord''s right.

5. The learned counsel for the respondent would contend that the revision petitioners/the tenants have got the audacity of not paying the rent, as

they did not even pay the rent from the year 2005, i.e., during the pendency of R.C.O.P., R.C.A. and upto C.R.P. He has given the details of

arrears of rent of all the three petitioners calculating fair rent and it comes to Rs. 8,39,005/-, Rs. 4,83,238/- and Rs. 7,26,002/- respectively.

Therefore, his contention is that even this subsequent conduct of the party has necessarily to be taken note of, when the learned counsel sought for

considering about the conduct of the landlords/respondents in proceeding with the joint venture of the property. It is submitted that the landlords

are having eviction proceedings in their favour and the tenants have not even paid the agreed monthly rent and therefore, the landlords should be

permitted to enjoy the benefits. Therefore, he would only contend that the conduct of the tenants also to be taken note of.

6. The learned counsel for the purchasers/respondents 3 and 4 submitted that the purchasers undertake before this Court that they are ready and

willing to demolish and reconstruct the property and in fact, impliedly the intention is only to demolish and reconstruct and he would submit that the

purchasers would abide by the undertaking given by the sellers/landlords.

7. Heard all the parties and considered the entire materials available on record.

8. The short point for consideration is whether in a case u/s 14(1)(b) of the Act, pending the appeal or revision or the execution petition, if the

property is sold, whether the demolition order accorded by the Court for eviction will enure to the benefit of the purchaser?

9. The only point raised before this revision Court is after eviction order by the Rent Controller, pending RCAs and just three weeks prior to the

delivery of the judgment in the appeals, sale deed has been executed by the landlords and therefore, the original application filed by the landlords

lost its character or material value. Of-course, it is true that there is a sale deed, but it is only in respect of a portion of the property, i.e., undivided

share of 1332 Sq. ft. and it is not a total sale deed, but only the Joint Venture agreement, wherein the purchaser and the landlords/sellers are going

to put up construction.

10. In this case, the point raised was once they have sold the undivided share, then the original application filed will lose its character or material

value, namely, the demolition and reconstruction benefit is totally lost, because what was undertaken by the landlords before the Rent Controller,

as per the undertaking of the landlord, is that they will demolish within a period of three months and put up construction after six months. That

undertaking also goes the moment they sold the property. Furthermore, new undertaking was not given.

11. At this juncture, it is relevant to consider the judgment relied on by the learned counsel for the petitioner in Arumuga Naicker (died) and Others

Vs. T.C. Baladhandayuthapani and Another, . In the said judgment, the issue was remitted back to the first appellate Court to get an undertaking

from the landlord in the box, at least in cross-examination, to put up construction, so that the bona fide will be established.

12.0. This proposition will not stand in the way in this case in view of the following judgments:

(1) N.S. Kandasami Nadar v. S.A. Selvaraj Nadar reported in 1980 TNLJ 251;

(2) Shunmugham and Others Vs. S. Satyanarayana Prasad, ; and

(3) Manickam Chettiar v. Pasumponnal Achi reported in 1976 TNLJ 256.

12.1. In N.S. Kandasami Nadar v. S.A. Selvaraj Nadar reported in 1980 TNLJ 251, this Court held as hereunder:

.... A mere change in the landlord cannot by itself terminate the proceedings initiated already and the devolution of the interest of the landlord, who

had commenced proceedings, on another, will result in the substitution of one landlord for the other. The order of eviction does not lapse or

otherwise come to an end. .... The right to evict an erring tenant is not a personal right peculiar to a landlord so as to be unavailable to his heir or

legatee, or a purchaser from him. .... But there is nothing in the provisions of the Act which totally prohibits a landlord from disposing of the

property. Merely because a landlord had filed an application for eviction on the ground of demolition and reconstruction, the power of disposal of

the landlord over the property under the general law cannot be taken away and when such a transfer is made, it is subject to any prior commitment

made by the landlord and that could be binding also on the successor-in-interest. Even otherwise, if such an undertaking can be used against the

landlord who gave it, it will be his duty to see to it that the purchaser also conforms to the undertaking given by him earlier. Indeed, in this case, the

second respondent has clearly expressed her intention to abide by the undertaking given by the first respondent towards the end of paragraph 5 of

the affidavit in C.M.P. No. 1137 of 1981. In the light of the aforesaid considerations, there is no need for fresh undertaking as contended by the

learned counsel for the petitioner.

12.2. This Court in Shunmugham and Others Vs. S. Satyanarayana Prasad, held as follows:

A landlord who satisfied the Rent Controller that the building required immediate demolition and reconstruction and obtains an order for delivery of

possession will be bound to comply with the undertaking given by him to demolish and reconstruct. But if he sells the property the sale is not

invalid; nor will the order for eviction be deemed to lapse. The Executing Court is bound to execute the order at the instance of the successor-in-

interest of the landlord.

12.3. Similar view was taken by P.R. Gokulakrishnan, J. (as he then was) in Manickam Chettiar v. Pasumponnal Achi reported in 1976 TNLJ

256.

13. Considering the principles enumerated in these judgments, this Court is of the view that merely because the landlord sells the property, because

of the long pendency of the case for no fault of his and due to such long delay, he cannot have anything, it will not affect his right over the property.

14. In Seshambal (dead) through L.Rs. Vs. Chelur Corporation Chelur Building and Others, , the Apex Court held as follows:

17. While it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if

subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent

events cannot be shut out from consideration. What the Court in such a situation is expected to do is to examine the impact of the said subsequent

development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the situation that

obtains on the date the relief is actually granted.

18. That proposition of law is, in our view, fairly settled by the decisions of this Court in Pasupuleti Venkateswarlu Vs. The Motor and General

Traders, . Krishna Iyer, J. (as His Lordship then was) has in his concurring judgment lucidly summed up legal position in the following words:

If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently

to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the

rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice - subject, of course, to the

absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to

confine it to the trial court. If the litigation spends , the power exists, absent other special circumstances repelling resort to that course in law or

justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for

making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can,

and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of

fairness to both sides are scrupulously obeyed.

15. The Apex Court in Gaya Prasad Vs. Sh. Pradeep Srivastava, , has categorically held that, ""..... It is pernicious, and we may say, unjust to shut

the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the

ground that certain developments occurred pendent lite, because the opposite party succeeded in prolonging the matter for such unduly long

period. ....". In the said judgment, the Supreme Court has further held that the need of the landlord on the date of petition is the crucial factor,

which the Court has to take note of and any subsequent event including the death of the party will not dis-entitle him to bona fide have the benefit.

16. Even as per the Supreme Court judgments, it is clear that the subsequent conduct would definitely be taken note of. In this case, the original

intention is never lost. It is only for demolition and reconstruction, which the purchaser also says. Therefore, the argument advanced by the learned

counsel for the petitioners that the original character and material value lost due to the sale of the property cannot be accepted.

17. Now, another important question is whether the subsequent events and conduct of the parties have to be taken note or not. Even it is the

argument of the learned counsel for the revision petitioners that the subsequent conduct of the landlords in selling the property is to be taken note of

and so also the conduct of the revision petitioners/tenants. The very subsequent event that has to be taken note of is regarding the conduct of the

tenants. The revision petitioners/tenants have not even chosen to pay the rent even though their eviction sought for right from the year 2005. In the

judgment in V. Kannadasan vs. K. Swaminatha Pathar, reported in 2007 4 L.W. 435, this Court has held that the conduct of the tenant in not

paying the rent regularly during the pendency of the proceedings will amount to willful default and such subsequent conduct of the tenant can be

taken into consideration in deciding the matter. When the tenant has failed to pay the rent regularly even during the pendency of the proceedings,

then there is no doubt that his conduct in paying the rent as he likes, will amount to willful default.

18.0. Keeping in mind the said proposition, when we analysis the conduct of the revision petitioners, it is clear that they failed in the first and

foremost duty, which is a statutory duty, cast upon them, i.e., paying the rent regularly.

18.1. The revision petitioner in CRP No. 2397 of 2012, who is a Doctor by profession, agreed to pay monthly rent of Rs. 500/- p.m. He paid rent

upto December 2005. In the meanwhile fair rent was fixed from 09.09.2005 at the rate of Rs. 8,665/-. He did not file appeal against the fair rent

fixation order and the same has become final. Therefore, he was in arrears of rent from September 2005 and even as per the fair rent fixed at Rs.

8,665/-, upto 31.10.2013 it comes to Rs. 8,39,005/-.

18.2. The petitioner in CRP No. 2478 of 2012 agreed to pay monthly rent of Rs. 120/- and fair rent was fixed at Rs. 4931/- as on 09.09.2005

and admittedly there is an appeal pending against the fair rent fixation. He had paid rent while filing the CRP before this Court for the period from

September 2005 to December 2012 by way of Demand Draft, at the agreed rate of Rs. 120/- and not at the fair rent. Thereafter, from January

2013 till today, he has not paid even the agreed monthly rent and the due at the rate of fair rent fixed at Rs. 4931/- is to the tune of Rs. 4,83,238/-

18.3. The petitioner in CRP No. 2479/2012, agreed to pay monthly rent of Rs. 160/-. He had also paid the agreed monthly rent throughout

RCOP, RCA and the CRP upto December 2012 and thereafter he had not even paid agreed rent and fair rent as fixed. He is due to the tune of

Rs. 7,62,002/-, at the fair rent fixed.

19. The contention of the learned counsel for the respondents is that it is not only default, but willful default. As submitted by the learned counsel

for the petitioner, the subsequent conduct of the parties has taken note of and while considering so, the conduct of the petitioners/tenants is taken

note of, which would definitely hit by Kannadasan''s case (cited supra).

20. In Kannadasan''s case (2007-4-L.W. 435), this Court in paragraph Nos. 21 and 22 has held as under:-

21. The learned counsel for the petitioners/tenants vehemently contended that when there is no willful default prior to the filing of the petition, the

subsequent arrears cannot be taken as willful default. This contention does not merit acceptance. Let us take a case when the tenant committed

default and continued to commit default or bring irregular in paying the rent during the pendency of proceedings. Is it fair to hold that there was no

willful default. This is all the more so, where the tenants have challenged the sale deed in favour of the respondent landlady.

22. The conduct of the tenant in not paying the rent regularly during the pendency of the proceedings will amount to willful default and such

subsequent conduct of the tenant can be taken into consideration in deciding the matter. In the decision reported in B. Anraj Pipada Vs. V.

Umayal, , S. Jagadeesan, J. has held that when the eviction proceedings have been initiated on the ground of willful default, one would expect the

tenant to pay the rent regularly every month at least after the initiation of the proceedings. When the tenant has failed to pay the rent regularly even

during the pendency of the proceedings, then there is no doubt that his conduct in paying the rent as he likes, will amount to willful default.

21. Hence, following all the above judgments of the Apex Court and this Court, I am of the view that the revision petitioners are not entitled to the

relief sought for by them and they are liable to be evicted. Both the Courts below have concurrently given fair, reasoned, clear and correct findings

and I do not find any reason to interfere with the reasoned orders of the Courts below. Accordingly, these civil revision petitions are dismissed and

the order dated 27.03.2012 passed by the appellate authority under the Act, namely, the learned VIII Judge, Court of Small Causes, Chennai, in

RCA Nos. 469, 471 and 470 of 2010 confirming the order dated 02.07.2010 passed by the Rent Controller, namely, learned X Judge, Court of

Small Causes, Chennai, in R.C.O.P. Nos. 980, 978 and 979 of 2005 is hereby confirmed. The revision petitioners are directed to vacate and

hand over the vacant possession of the property to the landlords within a period of two months from the date of receipt of a copy of this order. No

costs. Consequently, connected miscellaneous petitions are closed.