

(2011) 08 MAD CK 0344

Madras High Court

Case No: S.A. No. 1083 of 2011 and M.P. No. 1 of 2011

Tamil Nadu Slum Clearance
Board

APPELLANT

Vs

Lakshmi

RESPONDENT

Date of Decision: Aug. 26, 2011

Acts Referred:

- Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 - Section 65

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: R. Chellamuthu, for the Appellant; Thamizharasi, Associates for V. Vanitha, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Ramanathan, J.

The unsuccessful Defendant in O.S. No. 907 of 2001 on the file of the XVIII Assistant Judge, City Civil Court, Chennai, is the Appellant.

2. The Respondent/ Plaintiff filed a suit for damages for a sum of Rs. 3, 00,000/- towards compensation. The case of the Respondent/ Plaintiff was that the Respondent was allotted the Tenement by the Appellant Board on 31.3.1987 and the Tenement is in the 3rd Floor and the Respondent/ Plaintiff is occupying the building along with her husband and children. The Appellant did not provide any parapet wall despite the requests made by the occupants and on 12.11.1995 when the Respondent's husband was taking water to his house at 3rd Floor he had fallen from the 3rd Floor as there was No. parapet wall and died on the spot. Therefore, the Respondent claimed compensation from the Appellant and though the Appellant promised to give compensation, they have not paid the compensation and the Respondent/ Plaintiff was given appointment on compassionate ground and that was also terminated later. Therefore, the suit was filed for compensation.

3. The Appellant contested the suit stating that the suit is not maintainable as per Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. It was further stated that there was No. negligence on the part of the Appellant and the occupants were directed to vacate the Tenements considering the condition of the building for the purpose of effecting repairs and the Respondent refused to vacate and the husband of the Respondent was also a alcoholic and while he was in a drunken mood he had fallen from the 3rd Floor and therefore the Appellant was not liable to pay compensation.

4. The trial Court awarded the compensation of Rs. 2,50,000/- holding that the Appellant was responsible in not maintaining the property in good condition and the Appellant has also admitted that the parapet wall and the building were in a very bad condition and the Appellants have not proved that the deceased was in a drunken mood when he had fallen from the 3rd Floor and therefore the Appellant is liable to pay compensation. The trial Court relied upon the judgment reported in [Poonam Verma Vs. Ashwin Patel and others](#), to award the compensation of Rs. 3,00,000/-. The trial Court further held that Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 is not a bar for filing a suit for compensation. The lower appellate Court also confirmed the judgment of the trial Court after independently appreciating the oral and documentary evidence. Hence, the Second Appeal.

5. The learned Counsel for the Appellant submitted that u/s 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, No. Civil Court shall have jurisdiction in respect of any matter which the Government are, or the prescribed authority is empowered under the Act to determine and No. injunction shall be granted by any Court or other authority in respect of any action taken in pursuance of any power conferred by or under this Act and submitted that as per Section 65 of the said Act, the suit is not maintainable. He further submitted that the compensation awarded is on the higher side and considering the income and age of the deceased and the fact that the Respondent was given employment on compassionate ground, the Courts below ought to have awarded a lesser amount of compensation and the award of compensation of Rs. 2,50,000/- is on the higher side.

6. On the other hand, the learned Counsel for the Respondent submitted that it is admitted that the Respondent's husband had fallen from the 3rd Floor due to the poor maintenance of the building by the Appellant and therefore the Appellant is liable to pay compensation. The learned Counsel for the Respondent further submitted that the compensation awarded by the trial Court cannot be considered as excess and No. interest was awarded by the Courts below and only a consolidated amount of Rs. 2,50,000/- was awarded and till date No. amount was paid by the Appellant and therefore there is No. need to interfere with the concurrent findings of the Courts below. The learned Counsel further submitted that

Section 65 of the said Act will not be applicable to the facts of the case and the Respondent filed the suit for compensation and that cannot be decided under the provisions of the Act and therefore the Civil Court has jurisdiction to entertain the same.

7. On the above submissions, the following substantial questions of law arise for consideration in the Second Appeal:

(1) Whether the suit is barred u/s 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 ?

(2) Whether the compensation awarded is on the higher side ?

8. To appreciate the contention of the Appellant we will have to see the provision of Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 which is extracted as below:

65. BAR of JURISDICTION of CIVIL COURTS: Save as otherwise expressly provided in this Act, No. Civil Court shall have jurisdiction in respect of any matter which the Government are, or the prescribed authority is empowered by or under this Act, to determine and No. injunction shall be granted by any Court or other authority in respect of any action taken in pursuance of any power conferred by or under this Act.

9. According to me, a reading of Section 65 of the said Act, it is made clear that only in respect of matters for which the provision is made under the Act the Civil Court Jurisdiction is barred and in respect of claim of compensation there is No. provision in the Act by which the authorities are competent to grant any compensation. Hence, Section 65 of the said Act is not a bar for filing a suit for compensation for tortious act committed by the Appellant. Hence, the substantial question of law No. 1 is answered against the Appellant.

10. As regards the compensation, the learned Counsel for the Appellant is right in submitting that the compensation awarded is on the higher side. The trial Court relied upon the judgment reported in [Poonam Verma Vs. Ashwin Patel and others](#), wherein a sum of Rs. 2,40,000/- was awarded by fixing the annual income at Rs. 12,000/- and multiplied the same by 20 years. The trial Court also awarded Rs. 10,000/- towards mental agony. In the reported Judgment, considering the monthly income of the deceased namely Rs. 5,700/- and the age of the deceased which was 35 years, the Hon"ble Supreme Court fixed the compensation of Rs. 3,00,000/-. In this case, the monthly income was only Rs. 1000/- and the deceased was aged 35 years and therefore the trial Court ought not to have taken 20 years multiplier and ought to have taken only 16 years as the multiplier and in that case a compensation of Rs. 1,96,000/- would be the correct compensation. Nevertheless, as submitted by the learned Counsel for the Respondent, the Courts below have not granted any interest on the compensation and there was No. cross objection or appeal filed by

the Respondent. While awarding compensation the Courts ought to have awarded interest from the date of filing of the suit and in this case that was not awarded. Considering the said fact, though the compensation awarded by the Courts below is on the higher side, I do not find any reason to interfere with the awarded of compensation as No. interest was awarded by the Courts below. Hence, the substantial questions of law No. 2 is also answered against the Appellant.

11. In the result, the judgment and Decree of the Courts below are confirmed and the Second Appeal is dismissed. Consequently, the connected Miscellaneous Petition is closed.