

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No.2837 OF 2009
(Arising out of SLP(C)No.13576 of 2008)

K.S.POOMARI

.....APPELLANT(S)

VERSUS

A.UMARSHA & ORS.

....RESPONDENT(S)

O R D E R

Leave granted.

In our view, this appeal has no merit as all the courts below concurrently found that the Tamil Nadu City Tenants Protection Act has no application in the facts and circumstances of the present case. The same question was decided by this Court in Mylapore Club Vs. State of T.N.& Anr., (2005) 12 SCC 752, paragraphs 10 and 15 of which are quoted below :-

“10.It was argued that the object of the Parent Act was to ensure that the expectation of a tenant, who has put up a superstructure, that he would not be evicted is not belied, and that pulling down of the superstructure which was the only option available to a lessee if the lease did not contain a contract to the contrary, would result in congestion causing serious detriment to public health. This object would not be subverted by exempting leases of lands belonging to religious institutions or religious charities. It is a matter for the legislature to balance the object of the parent Act with the object of protecting the rights of religious institutions and religious charities and on the basis of the material available to the legislature, the decision to exempt the buildings of such religious institutions and religious charities has been taken. The

power to legislate is a plenary power vested in the legislature and unless those who challenge the legislation clearly establish that their fundamental rights under the Constitution are affected or that the legislature lacked legislative competence, they would not succeed in their challenge to the enactment brought forward in the wisdom of the legislature. Conferment of a right to claim the benefit of a statute, being not a vested right, the same could be withdrawn by the legislature which made the enactment. It could not be said that the Amendment Act lacked either legislative competence or that it is unconstitutional.

15. It is open to the legislature to bring in a law that has retrospective operation. That position is not disputed. When it affects the vested rights or accrued rights, that question will have to be considered in that context. But the right to take advantage of a statute has been held to be not an accrued right. The matter has been discussed in detail in *M. Varadaraja Pillai Vs. Salem Municipal Council* by the Madras High Court after referring to *Abbot Vs. Minister for Lands* and the subsequent decisions. By Section 3, which was in pari materia with Section 9 of the Amending Act of 1960, the legislature had intended that pending proceedings should be affected. Even otherwise, once the applicability of the Act itself is withdrawn, no relief can be granted to a person who could have been or who was earlier a beneficiary under that enactment, after such

withdrawal. Here, the Section provides that even if some steps have been taken pursuant to the claim by the tenant under Section 9 of the Parent Act, the proceeding cannot be continued in view of the exemption enacted in favour of the institutions. But the legislature has taken care to save the concluded transactions by providing that nothing contained in the Section shall be deemed to invalidate any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the said date.

Reading Section 3 of the Amending Act 2 of 1966, it could not be said that it is a legislative intervention with a judicial decision. The proviso has saved concluded transactions based on judicial adjudications. All that Section 3 does is to make it explicit that the amendment is intended to apply to pending proceedings. In the context of Section 6 of the General Clauses Act, unless it is shown that any right has accrued to the claimant under Section 6 of the General Clauses Act, such a provision making it clear that the Act could not be applied any more to pending proceedings is not in any way invalid or incompetent. Unless the proceedings have concluded and the rights of the

landlord has passed to the tenant, no right accrues to the tenant. He is only in the process of acquiring a right, the process having been set in motion at his instance. When pending proceedings are affected by an amendment, it is open to the legislature to provide that the said process cannot continue. That alone has been done by Section 3 of the Amending Act of 1996. As far as concluded judicial proceedings are concerned and cases where orders for possession have been executed or decrees satisfied in full before the date of the amendment, they have been saved by the proviso thereby ensuring that there was no interference by the legislature with judicial proceedings which had reached a conclusion, even though that judicial proceeding related to a religious or charitable institution exempted by the amendment from the purview of the Parent Act. We are, therefore, not in a position to find any merit in challenge to Section 3 of the amending Act.”

Mr.A.T.M.Rangaramanujam, learned senior counsel appearing on behalf of the appellant-tenant submits that the super structure made by the appellant on the disputed land should be allowed to be removed. On perusal of the orders passed by the Courts below, it appears that such order for removal of super structure has already been granted and no further direction need to be given.

Accordingly, we find no merit in this appeal and the same stands dismissed. There will be no

order as to costs.

Keeping in view the facts and circumstances of the present case, we grant nine months' time to the appellant to vacate the premises in question subject to filing of usual undertaking in this Court within four weeks from this date.

.....J.
(TARUN CHATTERJEE)

.....J.
(H.L.DATTU)

NEW DELHI;
APRIL 27, 2009.

