

CASE NO.:
Appeal (civil) 4531 of 2003

PETITIONER:
Mylapore Club

RESPONDENT:
State of Tamil Nadu & Anr.

DATE OF JUDGMENT: 28/10/2005

BENCH:
CJI R.C. LAHOTI, G.P. MATHUR & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
With
(C.A. No.6385/2003, C.A.No. 6386/2003, C.A. No. 7905/2003, C.A. No. 8853/2003, C.A. No.9400/2003, C.A. No.193/2004, C.A. No.1231/2004, C.A. No.1232/2004, C.A. No.5404/2004, C.A. No.4458/2004, C.A. No.191/2004)

P.K. BALASUBRAMANYAN, J.

1. These appeals challenge the decision of the Full Bench of the Madras High Court dated 4.3.2003 upholding the validity of Sections 2 and 3 of the Madras City Tenants' Protection (Amendment) Act, 1994 (Act 2 of 1996) published in the Official Gazette on 11.1.1996. By virtue of Section 2, Section 1 of the Madras City Tenants' Protection Act, 1921 was amended and in the sub-Section providing for exemptions from the operation of the Act, clause (f) was added and in that process exempting tenancies of land owned by religious institutions or religious charities belonging to Hindu, Muslim, Christian or other religions. By Section 3, it was declared that any proceeding instituted by a tenant in respect of any land owned by such a religious institution or religious charity, which was being exempted from the operation of the Act pending before any Court or other Authority, would stand abated and all rights and privileges conferred by the extension of the Madras City Tenants' Protection Act, 1921 would cease and would become unenforceable. However, a proviso was added to the effect that nothing contained in Section 3 shall be deemed to render invalid, any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the date of the coming into force of the Act. It is not necessary to set out in detail the history of the legislation since the same has been set out in S.M. Transports (P) Ltd. V. Sankaraswamigal Mutt [AIR 1963 SC 864] and in M. Varadaraja Pillai Vs. Salem Municipal Council [85 Law Weekly 760]. It is only necessary to notice a few salient aspects. The present amendment, more or less, resembling the amendments introduced by Amendment Act 13 of 1960 exempts lands belonging to a religious institution or religious charity, from the operation of the Act and also provides for abatement of pending proceedings and saving of completed transactions as against lands belonging to the Corporation of Madras, Municipalities and certain other entities under Act 13 of 1960.

2. The Madras City Tenants Protection Act, 1921 was enacted with the avowed object of giving protection against eviction to tenants who in Municipal towns, townships and adjoining areas in the State of Tamil Nadu have constructed buildings on other's lands, so long as they pay a fair rent for the land. It applied to all leases created before its commencement and initially it applied only to the City of Madras. Section 1(2) gave power to the State Government to extend the applicability of the Act as amended to

other areas in the year 1955. By virtue of Section 3, every tenant on ejectment was entitled to be paid as compensation, the value of any building which may have been put up by him. Compensation was liable to be paid for the trees planted and other improvements effect by him. This was included by the amendment in the year 1926. Section 9 enabled a tenant who was entitled to compensation and against whom a suit in ejectment had been filed, to apply to the court to direct the landlord to sell to him the optimum area out of the leasehold wherein the building of the tenant stood. By the Amending Act of 1955, the Act was made applicable to constructions put up before the Amending Act. Hence the Act had no application to tenancies created or constructions made after 12.9.1955. Notifications were issued extending the operation of the Act to various towns. The Act was further amended in the year 1960, by Act 13 of 1960. A proviso was added to Section 1(3) by providing that the Act shall not apply to tenancies of land owned by the Corporation of Madras, by the Municipalities, by the local Panchayats and certain other public bodies. Section 9 of that Amending Act provided for abating of certain pending proceedings affecting the rights and privileges which may have accrued to the tenant immediately before the commencement of Act 13 of 1960.

3. The amendment introduced by Madras Act 13 of 1960 taking away the protection of the Madras City Tenants' Protection Act, 1921 (hereinafter referred to as the "Parent Act") as amended, was the subject of a challenge in this Court in S.M. Transports (P) Ltd. V. Sankaraswamigal Mutt (supra). This Court repelled a challenge to the exclusion of non-residential tenants from the umbrella of protection afforded by the parent Act as amended. From the suits instituted by the Salem Municipality, a landlord, in respect of lands covered by the parent Act as amended, appeals reached the Madras High Court and that Court in M. Varadaraja Pillai Vs. Salem Municipal Council (supra) rejected all the contentions and upheld the validity of the Amending Act of 1960 including the exemption and the abatement of proceedings under Section 9 of that Act and upheld the validity of the decrees passed in the suits. The decision in M. Varadaraja Pillai Vs. Salem Municipal Council (supra) was sought to be challenged in this Court by way of appeals. But those appeals were dismissed without going into the question whether the Amendment Act was valid or not on the ground that the State of Madras had not been impleaded therein. Thus, the decision in M. Varadaraja Pillai Vs. Salem Municipal Council (supra) stood affirmed, but without consideration of the merits of the judgment therein. When the present enactment exempting tenancies created by religious institutions or religious charities came into force, Writ Petitions were again filed in the Madras High Court challenging the constitutional validity of the Amending Act practically on the same basis as raised when Amending Act 13 of 1960 was brought into force. Those writ petitions were dismissed on the basis that the judgment in M. Varadaraja Pillai Vs. Salem Municipal Council (supra) had been affirmed by this Court and in view of it, nothing remains to be decided since the very reasoning adopted therein, would apply to the present amendments. Feeling dissatisfied, the Writ Petitioners took up the matter in appeal to this Court. This Court in S. Shanmugavel Nadar Vs. State of T.N. and anr. [(2002(8) SCC 361)] took the view that since the appeals from M. Varadaraja Pillai Vs. Salem Municipal Council (supra) were not disposed of on merits, but were dismissed on technical grounds, the present batch of writ petitions which had been referred to a Full Bench for decision had to be decided by the full bench on merits and it was not correct to say that the Court could not go into the correctness of the decision in M. Varadaraja Pillai Vs. Salem Municipal Council (supra), the question referred to the full bench, since that decision had been affirmed by the Supreme Court. The case was remanded to the High Court for a decision on merits by the full bench. Thereafter, the full bench considered the question in detail. It held that the validity of the amendments could not be successfully challenged by the Writ Petitioners, the appellants before us, and that the challenges have to be thrown out, based on the principles of law as settled by the decisions of this Court in various decisions including the decision in S.M. Transports (P) Ltd. V. Sankaraswamigal Mutt (supra). It is the correctness of this

decision of the Full Bench that is challenged in these appeals.

4. Before proceeding to discuss the merits of the contentions, we may notice that on behalf of the appellant in Civil Appeal No. 4531 of 2003, shown as the leading appeal, learned counsel for the appellant-Mylapore Club submitted that the club, the tenant, had approached the landlord with a proposal for renewal of the lease and in that situation, no particular argument was being addressed on behalf of that appellant. Learned counsel in the other appeals made elaborate submissions on the question of validity of the Amending Act, Act 2 of 1966 and assailed the decision of the Full Bench upholding its validity.

5. Initially, we may notice that in some of these cases, the landlords, exempt institutions under the present Amendment, had filed suits for recovery and some of the tenants had sought to purchase the rights of the landlord by invoking Section 9 of the Parent Act as earlier amended. The proceedings in that behalf had not become concluded and had stopped midway and in some cases had gone to the extent of fixing the area to be conveyed and the price to be paid by the tenants, when the Amending Act came into force. The challenge before us, as it was before the High Court, essentially related to the validity of the very exemption being granted to such institutions and the provision made for the abatement of pending proceedings even though the tenant had put forward his right under Section 9 of the Act and steps have been taken in furtherance of the exercise of that right. The deprivation of the right to compensation on eviction under Section 3 of the Parent Act was also attacked. The challenge to Section 3 of the Amending Act relating to deletion of rights under Section 9 of the Act which conferred the right to the tenant to offer to purchase the required land considering the building put up by the tenant was somewhat muted in view of the fact that that aspect was clearly covered by the ratio of the earlier decision of this Court in *S.M. Transports (P) Ltd. V. Sankaraswamigal Mutt* (supra) and the fire was concentrated on depriving the tenant of the benefit under Section 3 of the Act which provided for payment of compensation to the tenant for the building which he had put up in case of his being evicted.

6. A few aspects may be referred to at this stage. Section 3 of the Parent Act as amended, conferred a right on the tenant to claim as compensation, the value of the building which he might have erected in the property leased. By virtue of Section 4 of the Act, it was provided that in a suit for ejectment against a tenant in which the landlord succeeded, the Court shall ascertain the amount of compensation payable under Section 3 and the decree in the suit shall declare the amount so found due and direct that, on payment by the landlord into Court, within three months from the date of the decree, of the amount so found due, the tenant shall put the landlord in possession of the land with the building and trees thereon. If the amount was not paid within the time, the suit was to stand dismissed and a bar was created in the landlord filing a fresh suit for a period of five years from the date of such dismissal. Section 5 indicated the manner of determination of the compensation payable under Section 4. If a landlord was unwilling to pay the compensation, then under Section 6, he had the right to seek the determination of rent for the land held by the tenant on lease. Section 7 contemplated the filing of an application by the landlord for fixing the rent. Section 9 provided that any tenant entitled to compensation under Section 3 and against whom a suit in ejectment had been instituted, could, within one month of the date of the Madras City Tenants' Protection (Amendment) Act, 1955 coming into force or of the date with effect from which the Parent Act was extended to the concerned town or village or within one month after the service on him of summons in a suit, apply to the Court for an order that the landlord shall be directed to sell for a price to be fixed by the Court, the whole or part of the extent of land specified in the application. If such an application was made, the Court had first to decide the minimum extent of land which may be necessary for the convenient enjoyment by the tenant, and then fix the price for that minimum extent to be retained by the tenant. The price had to be the average market value for the three years immediately

preceding the date of the order. The Court was given the discretion, subject to an outer limit of three years, to grant time to the tenant to pay into the Court the price so fixed. It was further provided that in default of payment by the tenant, the application under Section 9 shall stand dismissed. The earlier decision in *S.M. Transports (P) Ltd. V. Sankaraswamigal Mutt* (supra) related to the validity of the amendment which withdrew the applicability of the Act which had been extended earlier to various towns, in respect of lands belonging to local authorities. This Court upheld the validity of the withdrawal. This Court held that the withdrawal of the benefits conferred by the Act, the benefit of which had been extended at an earlier point of time, could not be held to be violative of the fundamental rights of the tenant who could have claimed the protection of the enactment if the withdrawal amendment had not come into force. This Court referred to *Kavalappara Kottarathil Kochuni & ors. Vs. The State of Madras* and ors. [(1960) 3 SCR 887] and noticed that it was held in that case that a law depriving a person of his property must be a valid law and, therefore, it should not infringe Article 19 of the Constitution. It was then postulated that a law depriving a person of his property would be bad unless it amounted to a reasonable restriction in the interest of the general public or for the protection of the interests of scheduled tribes. Proceeding on that basis and after referring to the decision in *Jayvantsinghji Vs. State of Gujarat* [(AIR 1962 SC 821] and distinguishing the same, the Court held that if the Act as amended by the Act of 1955 had held the field, the tenants could have purchased the land. But by reason of the 1960 Amendment, tenants could no longer do so. Neither the 1955 Act conferred any right as to superstructure under Section 9 of the Parent Act nor did the 1960 Act take away that right. If this distinction between the land and the superstructure is borne in mind, the untenability of the argument on behalf of the tenants would become obvious. This Court held that the 1960 Amendment did not in any way affect the fundamental rights of the tenants. The challenge to the deprivation of the right earlier granted under Section 9 of the Act had hence to be rejected. It was thus rejected.

7. In the order of reference to the Full Bench, the Division Bench of the Madras High Court felt that even though the decision in *M. Varadaraja Pillai Vs. Salem Municipal Council* (supra) regarding the validity of Section 9 of the Act may be unexceptionable in the light of the decision of this Court in *S.M. Transports (P) Ltd. V. Sankaraswamigal Mutt* (supra), the Division Bench might not be correct in thinking that the withdrawal of the protection of Section 3 was also covered by the decision in *S.M. Transports (P) Ltd.'s* case. The Division Bench pointed out that this Court in *S.M. Transports (P) Ltd.'s* case had distinguished the case in *Jayvantsinghji Vs. State of Gujarat* (supra) and had specifically stated that the Court was not concerned with the validity of the withdrawal of Section 3 of the Parent Act. The Division Bench noticed the following sentence in *S.M. Transports (P) Ltd.'s* case:

"This Court's opinion on the question of the constitutional validity of the Act in so far as it deprived the appellants of their right under Section 3 of the Principal Act is not called for: that will have to be decided in an appropriate case."

It is thus that the Full Bench of the Madras High Court was called upon to decide the constitutional validity of the provision which resulted in withdrawal of the benefit made available to tenants under Section 3 of the Act by the earlier extension of the Act to such tenancies and to answer the argument that the exemption granted to religious institutions and charitable trusts was violative of Article 14 of the Constitution and the further challenge to Section 3 of the Amending Act of 1996 to the extent it provided for abatement of proceedings initiated under Section 9 of the Parent Act as amended, even while saving concluded transactions.

8. The Full Bench of the High Court has referred to the various decisions of this Court wherein exemptions granted in respect of institutions from the purview of an Act were upheld by repelling challenges based on

Articles 14 and 19 of the Constitution. Moreover, it is seen that this aspect of the case is also to a great extent covered by the decision of this Court in S.M. Transports (P) Ltd. V. Sankaraswamigal Mutt concerning the very Act. Whereas that was a case of an amendment, exempting lands belonging to the Corporation of Madras, municipalities and other local authorities from the operation of the Act, now it is a case of exempting lands of religious and charitable institutions from within the purview of Act. We see no difference in principle while considering the validity of such an exemption provision whether it be relating to the tenancies created by local authorities or tenancies created by religious institutions or religious charities. The only available argument in that situation that was urged was that there was discrimination in the matter of exempting religious institutions. But the Court held that there was a reasonable classification and there was no discrimination by preferring one religious institution to another or one religion to another and in that context, there was no merit in the challenge based on Article 14 of the Constitution. In the light of the reasoning adopted by this Court in various decisions referred to in the decision of the Full Bench of the Madras High Court, we find that there is no reason to differ from the views so taken by the High Court. The power to exempt buildings belonging to religious institutions or religious charities is available to the legislature, based on the fact situation arising out of the extension of the Act. Earlier views on such tenancies and the extension of the legislation, cannot be held to be a ground for holding the present withdrawal arbitrary or unconstitutional. Nor can a tenant raise a contention that he had a vested right to the protection of a statute the benefit of which had been extended to him in between and in the absence of any such vested right, it is also not open to him to raise a contention that the Act should not be made inapplicable to tenancies created by certain religious institutions or religious charities.

8. In S. Kandaswamy Chettiar Vs. State of Tamil Nadu & Anr. [(1985) 1 SCC 296], this Court upheld the power given to the Government by the concerned statute to exempt buildings belonging to public trusts from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act. Here, the legislature itself has exempted the tenancies created by religious or charitable institutions. The grant of exemption to such tenancies has to be held to be having rational nexus to the objects sought to be achieved by the Act. The ratio of the decision in S.M. Transports (P) Ltd. V. Sankaraswamigal Mutt covers that position also.

9. 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 subserved 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.

10. The argument that that the withdrawal of the benefit that might have been available under Section 9 of the Parent Act was invalid and unconstitutional could not be pursued successfully in the light of the

decision in S.M. Transports (P) Ltd.'s case. The challenge based on that argument, was rightly repelled by the High Court.

11. The two main challenges before us, related to the question whether the High Court was right in holding that the withdrawal of the benefit available under Section 3 of the Act to the tenant was valid and constitutional. The second was whether the provision in the Amending Act for abating all proceedings initiated under Section 9 of the Act at the instance of the tenant, did not amount to interference in the decision making process and hence invalid in law. It was submitted that the provision in that behalf was beyond the power of the legislature and was even otherwise arbitrary and unreasonable.

12. Once the power to exempt an institution or entity from the operation of the Act is conceded to the legislature, it cannot be argued that the benefit of one section in that enactment could not be withdrawn. The right under Section 3 itself was extended only by the extension of the Act. The reasoning in S.M. Transports (P) Ltd. V. Sankaraswamigal Mutt would cover the situation. The full bench of the High Court in the judgment under appeal has rightly noticed that the right of the tenant in respect of the building put up by him will be governed by the terms of the contract and by general law. The position so adopted is unexceptionable.

13. It was contended that Section 3 of the Amending Act which provided for certain pending proceedings to abate was a legislative act to put an end to a judicial proceeding and was clearly unconstitutional. Such an exercise of power was not an enactment of a law but was an exercise of a judicial act which a legislature was incompetent to exercise. Passages in *Basanta Chandra Ghose Vs. Emperor* [AIR 1944 Federal Court 86] at pages 89 to 91 and from *Indira Nehru Gandhi Vs. Raj Narain* [(1975) Suppl. SCC 1] at page 40 were relied on in support.

14. 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* (supra) by the Madras High Court after referring to *Abbot Vs. Minister of Land* and the subsequent decisions. But 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, unless it is shown that right has accrued to the claimant, such a provision making it clear that the Act could not be applied anymore 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.

15. Having considered anxiously the relevant aspects urged before us and on considering the reasoning adopted by the full bench of the High Court while turning down the challenge to the constitutional validity of Act 2 of 1966, we are satisfied that no grounds is made out for interference with the decision of the High Court. We find that the reasoning adopted by the High Court is clearly sustainable in the light of the decisions of this Court referred to by it and its conclusion is in accord with the law emerging from the various decisions of this Court and the earlier decisions of the Madras High Court. We, therefore, confirm the decision of the High Court and dismiss these appeals. In the circumstances, we make no order as to costs.