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September 26.

SWAMI MOTOR TRANSPORT (P) LTD. AND ANOTHER

v.

SRI SANKARASWAMIGAL MUTT AND ANOTHER

(And Connected Appeals)

(B. P. SINHA, C. J., S. J. IMAM, K. SUBBA RAO, K. N. WANCHOO, J. C. SHAH and N. RAJAGOPALA AYYANGAR, JJ.)

Landlord and Tenant—Tenant building on leased land—Right of purchase—Whether property—Withdrawal of protection of non-residential building to certain towns—Whether discriminatory or a restriction right of property—Meaning of Property—Madras City Tenants' Protection Act, 1921(III of 1922), s.9, as amended by Act XIX of 1955 and Act XIII of 1960—Constitution of India, Arts. 14, 19 and 31.

Each of the appellants in the two appeals who were tenants of land in Tanjore on which non-residential premises had been constructed by them, applied to the Munsif under s. 9 of the Madras City Tenants' Protection Act, 1921(III of 1922) to have the respective sites conveyed to them after fixing the sale price as contemplated by the Act. Pending the decision of the applications by the Munsif, the protection and rights given to the tenants who had constructed buildings on leased lands by the Principal Act was withdrawn by Act XIII of 1960, in respect of non-residential buildings in Tanjore but with regard to the cities of Madras, Salem, Madurai, Coimbatore and Tiruchirappalli the protection and rights were retained both as regards residential buildings and non-residential buildings. The appellants applied under Art. 226 of the Constitution to the High Court of Madras praying for a *mandamus* directing the Munsif to determine their applications under s. 9 of the Principal Act as extended to the town of Tanjore by Notification and the Act of 1955 ignoring Act XIII of 1960 which was impugned as offending Arts. 14, 19 and 31 of the Constitution. The High Court upheld the validity of the Act following the earlier decision of that Court.

Held, that confining the protection to residential buildings only in the town of Tanjore while giving protection to tenants of both residential and non-residential buildings in the other

towns was based upon real differences between Tanjore and the other towns regarding the pressure on non-residential accommodation and other relevant factors including population and that the differentiation was related to the object namely protecting tenants of residential buildings principally and also of non-residential buildings where the need was most felt.

Shri Ram Krishna Dalmia v. *Shri Justice S. R. Tendolkar* [1959] S.C.R. 279, *Bhudan Choudhry* v. *State of Bihar*, [1955] 1 S.C.R. 1045 and *The State of West Bengal.* v. *Anwar Ali*, [1952] S.C.R. 284, referred to.

Held, further, that Art. 19(1)(f) guarantees both abstract as well as concrete rights of property and that property has the same meaning in Art. 19(1)(f) and Art. 31(1).

State of West Bengal v. *Subodh Gopal Bose* [1954] S.C.R. 587, *The Commissioner Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, [1954] S.C.R. 1005 and *Chiranjit Lal Choudhury* v. *Union of India*, [1950] 869, referred to.

Held, further, that 'law' under Art. 31 must be a valid law and to be valid it must stand the test of other fundamental rights including Art. 19(1)(f) of the Constitution.

Kavalappara Kottarathil Kochuni v. *State of Madras*, [1960] 3 S.C.R., 887 referred to.

Held, further, that the right to purchase property conferred by a Statute is in its nature the same as the right of purchase conferred by contract and in neither event could it amount to a right of property.

Maharana Shri Jayvantsinghji Ranmalsinhghji etc. v. *The State of Gujrat*, [1662] Supp. 2 S. C. R. 411.

Held, also that the principal Act did not confer a right on the tenant to the superstructure and therefore, the impugned Act did not take away any such right.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 228 and 229 of 1962.

Appeals from the judgment and order dated June 26, 1961 of the Madras High Court in W. P. Nos. 829 and 833 of 1960.

A. V. Viswanatha Sastri, G. Ramaswami, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the appellants.

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S. Kothandarama Nayanar and *M. S. K. Aiyangar*, for the respondent No. 1.

A. Ranganadham Chetty and *A. V. Rangam*, for Intervener No. 1 (in both the appeals.)

R. Thiagarajan, for Intervener No. 2 (in C. A. No. 228 of 1962).

1962. September 26. The Judgment of the Court was delivered by

Subba Rao, J.

SUBBA RAO, J.—These two appeals on certificate raise the same points and arise out of a common order made by the High Court of Judicature at Madras in Writ Petitions Nos. 829 and 830 of 1960. Both of them may conveniently be disposed of together.

The facts in Civil Appeal No. 228 of 1962 are briefly as follows : The first appellant is a limited company carrying on transport business. The second appellant is its managing director. The first appellant took over the business of Swami Motor Service Company, of which the second appellant was the Managing Partner. In his capacity as Managing Partner of the said company, the second appellant took a lease of a vacant site, being survey No. 2770, belonging to the first respondent. After the first appellant took over the business of the said partnership company, including its leasehold interest in the said site, the first respondent recognized him as his tenant and was receiving the rent from him. It is alleged that the appellants constructed many valuable structures on the said site. The first respondent i.e., Sri Sankaraswamigal Mutt, through its trustee, filed a suit, O. S. No. 103 of 1953, in the court of the District Munsif, Tanjore, for evicting the appellant-company from the site; and on July 30, 1954 a compromise decree for eviction was made therein giving six month's time for the appellant-company to vacate the site. The decree-holder filed an execution petition

in the said court against the first appellant for executing the decree. Pending the execution petition, Madras Act XIX of 1955 was passed empowering the State Government to extend the Madras City Tenants' Protection Act, 1921 (III of 1922), hereinafter called the "Principal Act", to any municipal town by notification in the Fort St. George Gazette. In exercise of the powers conferred by Act XIX of 1955, the Government made an order notifying the Town of Tanjore to have come within the purview of the Principal Act. Under the provisions of the Principal Act, the appellants filed Original Petition No. 39 of 1956 in the said court for an order directing the execution of a conveyance of the said site in favour of the company on payment of a price fixed by the court. Those proceedings took a tortuous course mainly, it is alleged, on account of obstructive tactics adopted by the respondents in anticipation of an expected legislation withdrawing the benefits conferred on tenants of non-residential buildings in the Town of Tanjore. As anticipated the State Legislature passed Act XIII of 1960, amending the Principal Act : the effect of the amendment was to withdraw the protection given to tenants of non-residential buildings in the municipal town of Tanjore and certain other towns. Under the provisions of the impugned Act, proceedings instituted under the provisions of the Principal Act relating to non-residential buildings situated in towns other than those preferred would abate. The appellants filed a petition under Art. 226 of the Constitution in the High Court of Judicature at Madras for the issue of a writ of *mandamus* directing the District Munsif to dispose of the petition in accordance with the provisions of s. 9 of the Principal Act, as it stood before its amendment by Act XIII of 1960.

In Civil Appeal No. 229 of 1962 the subject-matter is a site, being survey No. 74, Railway Road, Tanjore, belonging to the first respondent to this

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appeal. The appellant's father executed a lease deed in favour of the first respondent in respect of some parts of the said site; the lease deed contained a clause giving an option to the tenant to renew the lease for a further period of 10 years. It is alleged that the appellant's father had erected substantial structures at heavy cost on the site even before the said lease as he was in possessions of the said site as a tenant under the predecessor of the first respondent. After the expiry of 10 years, the appellant's father exercised the option and continued to be in possession of the property as tenant. The first respondent filed a suit (O. S. No. 315 of 1950) in the Court of the District Munsif, Tanjore, for evicting the appellant from the property, and obtained a compromise decree dated January 10, 1952. Under the compromise decree the tenancy was extended to 12 years from January 1, 1952 and after the expiry of that period the first respondent was entitled to execute the decree and take possession of the site after removing the super-structures. Subsequently, as already noticed, the provisions of the Principal Act were extended to the Town of Tanjore. Thereupon the appellant's father filed O. P. No. 43 of 1956 in the Court of the District Munsif, Tanjore, for an order directing the first respondent to convey the site in his favour on payment of the price to be fixed by the court. As in the first case, in this case also the proceedings dragged on till the Act of 1955 was passed. The appellant filed a petition under Art. 226 of the Constitution in the High Court of Judicature at Madras for the issue of a writ of *mandamus* directing the District Munsif, Tanjore, to dispose of the application in accordance with the provisions of the Principal Act prior to its amendment by Act XIII of 1960.

In both the petitions the appellants attacked the constitutional validity of Act XIII of 1960. The High Court, by a common order, upheld the

constitutional validity of the said Act following the decision of a division Bench of the same Court, in *Swaminathan* v. *Sundara* (1). These two appeals, as aforesaid, have been preferred on certificate issued by the High Court.

Mr. A. V. Viswanatha Sastri, learned counsel for the appellants in both the appeals, raised before us the following points: (1) The 1960 Act infringes the fundamental right of the appellants under Art. 14 of the Constitution for two reasons, namely, (i) while the object of enacting the 1960 Act was for safeguarding tenants from eviction from residential buildings, its provisions introduce a classification between non-residential buildings in different municipal areas and gives relief to tenants of non-residential buildings in some towns and refuses to give the same relief to similar tenants of such buildings in other towns in the State and such a classification has absolutely no relevance to the object sought to be achieved by the Act; and (ii) the 1960 Act makes a distinction detween non-residential buildings in Madras, Salem, Madurai, Coimbatore and Tiruchirappalli on the one hand and those in other towns, including Tanjore, on the other and gives protection to the tenants of such buildings in the former group and denies the same to tenants of similar buildings in the latter group, though the alleged differences between the two sets of localities have no reasonable relation to the object sought to be achieved, namely, the protection of tenants who have built substantial structures from eviction. (2) The 1960 Act also offends Arts. 19 (1)(f) and 31(1) of the Constitution as it is not a reasonable restriction in the interest of the public on the proprietary rights acquired by the appellants under the earlier Act XIX of 1955.

Mr. Nayanar, appearing for the first respondents in both the appeals, contends that ss. 3 and 9 of the Principal Act could not be invoked by the appellants, as the lease deeds executed by them contain a

(1) I. L. R. 1961 Mad. 976.

clear covenant that they would vacate their lands within a prescribed period and as they had put up their buildings subsequent to the execution of the lease deeds. He sustains the constitutional validity of the 1960 Act on the ground that it neither offends Art. 14 nor Art. 19 of the Constitution.

Mr. A. Ranganadham Chetty, appearing for the State of Madras, to which notice was given, elaborates the second contention advanced by learned counsel for the respondents by placing before us some statistical data which, according to him, affords a reasonable basis for the classification. As regards the contention based on Art. 19, he contends that the rights conferred under Act XIX of 1955, namely, right to compensation on eviction under s. 3 of the said Act and the right to obtain a sale deed under s. 9 thereof, are only analogous to a right to sue or a right to purchase a property and they could not in any sense of the term be equated with property rights.

Before we consider the arguments, it would be convenient to notice the scope of the relevant provisions of the Principal Act, Act XIX of 1955 and Act XIII of 1960. The Principal Act, as amended by Act XIX of 1955, was enacted, as its preamble shows, to give protection to certain classes of tenants who in municipal towns and adjoining areas in the State of Madras have constructed buildings on others' lands in the hope that they would not be evicted so long as they paid a fair rent for the land. The gist of the relevant provisions of the Principal Act, as amended by Act XIX of 1955, may be stated thus: The Act applies to any building, whether it is residential or non-residential. Every tenant shall on ejectment be entitled to be paid as compensation the value of any building, which may have been erected by him and also the value of trees which may have been planted by him; in a suit for ejectment the court shall ascertain the amount of compensation payable

by the landlord to the tenant and the decree shall direct that the landlord shall be put in possession of the land only on payment of the said amount in court within the prescribed time; if the landlord is unable or unwilling to pay the compensation within the prescribed time, he may apply for fixing a reasonable rent for the occupation of the land by the tenant; a tenant, who is entitled to compensation and against whom a suit for ejectment has been instituted, may apply for an order that the landlord may be directed to sell the land to him for a price to be fixed by the court, and thereupon the court shall fix the price in the manner prescribed in s. 9 and direct the said amount to be paid to the landlord by the tenant within a particular time and in default his application shall stand dismissed. Nothing contained in the Act shall affect any stipulations made by the tenant in writing registered as to the erection of buildings, in so far as they relate to buildings erected after the date of the contract: the provisions of the Act apply to suits for ejectment which are pending and in which decrees for ejectment have been passed but have not been executed before the coming into force of the Act: vide ss. 2(1), 2(1-A), 3, 4, 6, 9 and 12 of the Act. It is, therefore, clear that under the Principal Act tenants in the Madras City acquired valuable rights which they did not have before the said Act was passed. Prior to the Principal Act a tenant of a land over which he had put up buildings for residential or non-residential purposes was liable to be evicted in accordance with law and his only right was to remove the superstructure put up by him on the land before delivering vacant possession. But after the Principal Act, a tenant similarly situated has an option to claim either compensation for the superstructure put up by him or to apply to the court to have the land sold to him for a consideration to be fixed by it.

The Principal Act was amended by the Madras Act XIX of 1955 empowering the State Government

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to extend, by notification in the Official Gazette, the protection given by the Principal Act to tenants of any other municipal town in the State of Madras and any specified village within five miles of the City of Madras or such municipal towns who have constructed buildings in others' lands with the hope that they would not be evicted so long as they paid fair rent. In exercise of the power so conferred, the State Government issued on March 28, 1956, a notification extending the Principal Act to the municipal town of Tanjore. The result of the notification was that tenants like the appellants who were tenants of land over which they had put up non-residential buildings acquired a right to ask for compensation for the buildings so erected on ejectment or to apply to court for directing the decree-holder to sell the land to the tenants after fixing the price in the manner prescribed in the Act. This Act was also extended to various other towns like Madurai, Coimbatore, Salem and Tiruchirappalli.

The Legislature again changed its mind and passed Act XIII of 1960. By s. 3 of that Act the following amendments were made in s. 2 of the Principal Act:

> "(i) for clause (1), the following clause shall be substituted, namely:—
>
> (1) 'Building' means any building, hut or other structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever used—
>
> (i) for residential or non-residential purposes, in the City of Madras, in the municipal towns of Coimbatore, Madurai, Salem and Tiruchirappalli and in any village within five miles of the City of Madras or of the municipal towns aforesaid and

(ii) for residential purposes only, in any other area, and includes the appurtenance thereto."

Section 9. Every proceeding pending before any Court, other than a proceeding relating to any property situated in—

(i) the City of Madras,

(ii) the municipal towns of Coimbatore, Madurai, Salem and Tiruchirappalli, and

(iii) any village within five miles of the City of Madras or of the municipal towns aforesaid,

on the date of the publication of this Act in the Fort St. George Gazette, and instituted under the provisions of the Principal Act, shall in so far as such proceeding relates to non-residential buildings, abate, and all rights and privileges which may have accrued immediately before such date to any person in respect of any property situated in any area other than the areas referred to above by virtue of the Principal Act, shall, in so far as they relate to non-residential buildings, cease and determine and shall not be enforceable:

Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which the decree or order passed has been executed or satisfied in full before the date mentioned in this section.

The result of this amending Act in respect of non-residential buildings in places other than the City of Madras and the other specified municipal towns is that all proceedings pending in courts in respect of those buildings abated and the rights acquired by tenants under the 1955 Act in respect of the said buildings are extinguished. The rights, so far relevant to the present enquiry, which the tenants

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had acquired under the 1955 Act were: (i) they were entitled on ejectment to be paid as compensation the value of the buildings erected by them or by their predecessorsin-in-terest, (ii) the court before issuing a decree for eviction should ascertain the amount due to a tenant and the decree for eviction should be made conditional on the payment of the decree amount, (iii) in suits where decree for ejectment had been passed before the 1955 Act came into force, a tenant could file an application for ascertainment of the compensation due in execution and for a fresh decree to be passed in accordance with s. 4 of the Principal Act, and (iv) he had also a right, at his option, to apply within the prescribed time to the court for an order directing the landlord to sell the land to him for a price fixed by the court, whether a decree for ejectment had or had not been passed. The tenants of non-residential buildings in places other than the City of Madras and the specified municipal towns lost the said rights after the 1960 Act came into force.

The first question is whether the 1960 Act, in so far as it withdrew the rights conferred upon the tenants of non-residential buildings in Tanjore, offends Art. 14 of the Constitution, or whether it can be justified on the doctrine of classification. The law on the subject is so well settled that it does not call for an extensive restatement : it would be enough if the relevant propositions in the judgment of this Court in *Shri Ram Krishna Dalmia* v. *Shri Justice S. R. Tendolkar*(1) are noticed, and they are :

> "(1) there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles ;
>
> (2) it must be presumed that the legislature understands and correctly appreciates the need

(1) [1959] S. C. R. 279, 297-298.

of its own people, that its laws are directed to problems made manifest by experience and that its discrimination are based on adequate grounds ;

(3) in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation ; and

(4) while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

All the said propositions are subject to the main principle of classification, namely, that classification must be founded on intelligible differentia and the differentia must have a rational relation to the object sought to be achieved by the statute in question ; and that the classification may be founded on different bases, such as, geographical, or according to objects or occupations or the like : see *Budhan Choudhry* v. *The State of Bihar*(1) and *The State of West Bengal* v. *Anwar Ali Sarkar*.(2)

Bearing the said well settled principles in mind, let us now proceed to consider them in relation to the facts of this case. The first contention is that the object of the Act is to safeguard the tenants from eviction from residential quarters, but it affords

(1) [1955] 1 S. C. R. 1045. (2) [1952] S. C. R. 284.

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protection to tenants of non-residential buildings in the City of Madras, in the municipal towns of Coimbatore, Madurai, Salem aud Tiruchirappalli and in any village within five miles of the aforesaid City and municipal towns, and there is no rational relation between the said classification and the object of the Act. The object of the Act, the argument proceeds, is to protect the tenants of residential buildings, whereas the Act protects also the tenants of non-residential buildings in the aforesaid City and municipal towns. So stated the argument appears to be plausible, but a closer scrutiny reveals that the object of the Act is to protect not only tenants of residential buildings but also of other buildings, though it is mainly conceived to protect the tenants of residential buildings. The following is the statement of objects and reasons attached to Act XIII of 1960 :

> "The Madras City Tenants' Protection Act, 1921, was enacted with the main object of safeguarding the tenants from eviction from residential quarters. In consistence with this object it is proposed to restrict the application of the Madras City Tenants' Protection Act, 1921 (Madras Act III of 1922) to residential buildings only."

It will be noticed from the above that the main object of the Act is to safeguard the tenants of residential buildings from eviction but it is not the sole object of that legislation. The objects of the 1960 Act only refer to the objects of the Principal Act. The objects and reasons of the Principal Act are given in the Fort St. George Gazette dated July 26, 1921, at p. 1491. The relevant part of the objects reads thus :

> "In many parts of the City of Madras dwelling houses and other buildings have, from time to time, been erected by tenants on land belonging to others in full expectation that subject to

payment of fair ground rent, they would be left undisturbed in possession, notwithstanding the absence of any specific contract as to the duration of the lease or the terms on which the buildings were to be erected. Recently attempts made or steps taken to evict a large number of such tenants, have shown that such expectations are likely to be defeated.....

The Bill provides for the payment of compensation to the tenant in case of ejectment for the value of any buildings which may have been erected by him or by his predecessors-in-interest. It also provides for settlement of fair rent at the instance of the landlord."

The object of the said Act was to protect the tenants not only of dwelling houses in the City of Madras but also of other buildings in that City. The provisions of the Principal Act also, it is not disputed, apply both to residential and non-residential buildings. So too the 1955 Act. Therefore, when in the "objects and reasons" attached to Act XIII of 1960 the authors of that Act stated that it was enacted with the main object of safeguarding the tenants from eviction from residential quarters, they were only emphasizing upon the main object but were not excluding the operation of that Act to non-residential buildings. So it is not correct to state that the object of the Act is only to protect the tenants of residential buildings. There are no merits in this contention.

The more serious contention is that there is no rational basis for classifying the tenants of non-residential buildings in the City of Madras and the municipal towns of Madurai, Coimbatore, Salem and Tiruchirappalli and those of similar buildings in other towns like Tanjore. It is said that if protection is necessary for the tenants of non-residential buildings in the said City and towns, the same protection is equally necessary for tenants of similar buildings

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in Tanjore and other towns. To state it differently, the argument is that there are no intelligible differences between the non-residential buildings located in the City of Madras and the municipal towns of Madurai, Coimbatore, Salem and Tiruchirappalli and those situated in other towns. The learned Judges of the High Court in *Swaminathan* v. *Sundara* (1), which was followed in the present case, adverting to this argument observed at p. 987 :

> "It is apparent that having regard to the large population in the first five areas and the large scale commercial activities in these areas, the Legislature thought fit that non-residential quarters occupied by tenants on lands belonging to others should also be offered relief from being evicted summarily and arbitrarily."

This passage was criticized by learned counsel for the appellants and it was asked, what was the relevancy between the population of the different towns in the matter of eviction of tenants from non-residential buildings ? The population of a town is not a relevant circumstance though its density may be : the pressure on the buildings or on the sites suitable for building purposes does not depend solely upon population without reference to the area available for building purposes, so the argument proceeds. Mr. A. Ranganadham Chetty, appearing for the State of Madras, attempted to place before us statistics to establish that towns preferred under the Act are highly populated industrial and commercial centres of the State compared to other towns like Tanjore and, therefore, there would necessarily be high pressure on non-residential buildings in the said localities and consequently a spate of evictions. Before looking into the statistics it would be convenient to notice the allegations made in the affidavits. On behalf of the State of Madras, J. Sivanandam, Secretary to Government, has filed an affidavit, wherein he says in paragraph 8 :

(1) I. L. R. 1961 Mad. 976.

"On facts the position is that these four towns of Madurai, Tiruchirappalli, Salem and Coimbatore ranked the first four next to the City of Madras in population, income and commercial activities and a very large number of tenants had been enjoying the protection afforded by the then existing provision of this Act, in respect of residential and non-residential buildings as well. It was therefore thought that it would not be proper to deprive these tenants of the protection in respect of non-residential buildings."

It may at once be noticed that the industrial potential of the preferred towns is not specifically mentioned. But it appears to us that the expression "commercial activities" is used in a comprehensive sense so as to take in industrial activities. This statement is sought to be supported in the affidavit by the proceedings of relevant authorities and the correspondence that passed between the State and the Union Governments. The following extract from the Select Committee's proceedings throws further light on the subject :

".....on the reports received from Collectors, the Act was extended to certain Municipalities. But it was found that such extension caused inconvenience to public bodies and other institutions which owned the lands inasmuch as they were not able to get sufficient returns from these to carry on their activities under present conditions.....However it was represented that in the case of Madras City such a restriction would cause considerable hardship to the large number of small business establishments and the privilege and concession enjoyed by them over such a long period should not be interfered with. While the Government felt the reasonableness of this demand that in the City non-residential buildings should not be excluded from the protection afforded by the

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Act, they were of the view that in place where the provisions were being extended they should apply only to residential buildings."

".....having regard to the wishes of certain Hon. members that not only in the City but in other municipalities also there should be no distinction between residential and non-residential buildings, he (the Chairman) proposed to add the four municipalities of Madurai, Tiruchirappalli, Salem and Coimbatore, in sub-clause (i) of the proposed clause (1)."

These passages disclose not only the legislative objects but also the political pressures for certain amendments. But we are not concerned with the political aspects of the legislation but only with its objects. The special treatment given to the City of Madras and the other specified town is based upon the fact that there are a number of small business establishments in Madras and other specified towns implying thereby that there are not so many such establishments in other towns. The correspondence between the Government of India and the Government of Madras throws light on this question. It is stated therein :

"Most of the tenancies of non-residential buildings which enjoyed protection from eviction are in the City of Madras and the Municipal towns of Madurai, Coimbatore, Salem and Tiruchirappalli which have been classed as Special Grade or Selection Grade municipalities on the basis of income and population. ...."

"This concession is considered necessary because in the City of Madras and in the said four Municipal towns there are a large number of such tenants to whom denial of the protection will cause great hardship. They have been enjoying this protection for some time past and they have invested large sums of money in the hope

> that they will not be evicted so long as they pay the rent due."

This again emphasizes the fact that the preferred towns are of special importance and that comparatively a large number of non-residential buildings are situated in the said City and towns. G. O. No. 331, L. A., dated February 18, 1953, passed by the Government of Madras also shows the comparative importance of the said towns. It is stated therein :

> "They (Government) consider, however, that in view of the size and importance of the three municipalities (Tiruchirappalli, Coimbatore and Vijayawada) referred to above and also of those of the Salem Municipality, the four municipalities stand distinctly apart from the other first grade municipalities, excluding of course Madurai Municipality which stands in a class by itself. The Government accordingly direct that with effect from 1-4-1953 the municipalities of Coimbatore, Salem and Tiruchirappalli and Vijayawada be classified as selection grade municipalities.....".

In the reply affidavit many of the factual assertions made in the counter-affidavit have been denied. It is alleged that the number of tenants of non-residential buildings who enjoyed the benefit of the provisions of the Act in municipal towns like Tanjore, Vellore and Connoor is also large. It is denied that the preferred towns other than the City of Madras have been enjoying the protection for a long time, for the amending Act itself was passed only in 1955. It is pointed out that the population of a town is irrelevant but density of population matters and that the density of population in Tanjore, Coimbatore, Madurai and Salem is the same. Out of the allegations and counter-allegations the following facts emerge: (1) Madras is a city of large population and

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commercial importance; (2) Madurai is classified as a special grade municipality and the municipalities of Coimbatore, Salem and Tiruchirappalli as selection grade municipalities on account of their size and importance: they have comparatively larger population and commercial potentialities; (3) in the said towns there are a large number of non-residential buildings; and (4) except for some vague averments made in the reply affidavit, there is nothing on record to establish that the number of non-residential buildings in Tanjore compares favourably with that in the preferred towns. These facts are, to some extent, supported by the statistical data furnished before us from authorized Government publications. In "Madras District Gazetteers, Madurai" it is stated at p. 172:

> "Madurai is one of the very few districts in this State in which a comparatively large portion of the population, about 37 per cent., lives by industries, trade and other avocations. This is no wonder, seeing that it has never had, in spite of irrigation works, any facilities like Tanjore for absorbing the great bulk of its population in agriculture. In fact it stands next to the Coimbatore district in possessing a considerable proportion of the non-agricultural population".

Though the statement refers to the districts as a whole, it is well known that most of the industries are concentrated in the municipal towns of Madurai and Coimbatore. In "India, 1962" the following figures of population in some Towns of Madras State are given:

Madurai	...	...	4,24,975
Coimbatore	...	...	2,85,263
Tiruchirappalli	...	...	2,49,933
Salem	...	...	2,49,084
Tuticorin	...	...	1,24,273
Vellore	...	...	1,13,580

Tanjore	...	...	1,10,968
Nagercoil	...	...	1,06,497

It is not necessary to pursue the matter further. It is true that population alone cannot be a basis for the classification made under the Act, but concentration of large population is generally found only in towns where there are commerce and industries. Though it is possible that a smaller town with a lesser population may also have heavy industries and commercial activities, that is an exception rather than the rule. But in this case the Gazetteer supports the averment made by the State in the affidavit that the municipal towns selected for preferential treatment. are more advanced commercially than other towns in the State. Though the Government, at the earlier stages of this litigation or even before the 1960 Act was passed, did not bring out these differences based upon commerce and industry as prominently as its counsel now seeks to do before us, we cannot brush aside the argument as an afterthought. That apart, the Government of Madras was not a party in the High Court and it had no opportunity to put forward its case before that Court. On the basis of the allegations made in the affidavit filed on behalf of the State of Madras, supported as it is by the statistical data furnished before us, we hold that there are real differences between non-residential buildings in the towns of Madurai, Coimbatore, Salem and Tiruchirappalli and those in other towns of the Madras State which have reasonable nexus to the object sought to be achieved by the Act.

The more difficult point is the impact of Arts. 19 (1) (f) and 31 (1) of the Constitution on the impugned provisions of the Act. The relevant Articles of the Constitution read thus:

> *Article 19 (1) (f).* All citizens shall have the right to acquire, hold and dispose of property.

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Article 31. (1). No person shall be deprived of his property save by authority of law.

To seek the protection of either of these Articles it must be established that the tenants of residential buildings in Tanjore had acquired a right to property, for unless they had acquired such a right, the 1960 Act could not have deprived them of such a right or imposed any restrictions thereon. The question, therefore, is whether the rights created by the 1955 Act by extending the provisions of ss. 3 and 9 of the Principal Act to such tenants had given them a right to property. The argument of learned counsel for the State of Madras may be summarized thus: Art. 19(1)(f) deals with abstract rights of property, while Art. 31 (1) with concrete rights; under Art.31(1) there is no limitation on the power of the appropriate Legislature to make a law depriving a person of his property; the only restriction in the case of deprivation of property by a State is that it can be done only by a statutory law; if so, on the assumption that the Act of 1955 conferred a concrete right of property on the appellants, they have been validly deprived of it by the 1960 Act and, therefore, no fundamental right of the appellant had been infringed; if, on the other hand, the argument proceeds, Arts. 19 (1)(f) and 31(1) are both held to relate to concrete rights of property, it would lead to two anomalies, namely, (i) Art. 31(1) would become otiose, and (ii) as deprivation of property cannot possibly be a restriction on the right to hold property, every law depriving a person of his property would invariably infringe Art.19 and, therefore, would be void. In support of his contentions he relies upon the observations of Patanjali Sastri, C. J., and Das, J., as he then was, in *The State of West Bengal* v. *Subodh Gopal Bose*(1). In that case Patanjali Sastri, C. J., made the following observations:

> "I have no doubt that the framers of our Constitution drew the same distinction and classed

(1) [1954] S. C. R. 587. 597.

> the natural right or capacity of a citizen "to acquire, hold and dispose of property" with other natural rights and freedoms inherent in the status of a free citizen and embodies them in article 19(1), while they provided for the protection of concrete rights of property owned by a person in article 31."

These observations no doubt support learned counsel's contention, but this Court in a later decision in *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*(1) considered the said observations and remarked:

> "This, it may be noted, was an expression of opinion by the learned Chief Justice alone and it was not the decision of the court; for out of the other four learned Judges who together with the Chief Justice constituted the Bench, two did not definitely agree with this view, while the remaining two did not express any opinion one way or the other. This point was not raised before us by the Advocate-General for Madras, who appeared in support of the appeal, nor by any of the other counsel appearing in this case. The learned Attorney-General himself stated candidly that he was not prepared to support the view taken by the late Chief Justice as mentioned above and he only raised the point to get an authoritative pronouncement upon it by the court. In our opinion, it would not be proper to express any final opinion upon the point in the present case when we had not the advantage of any arguments addressed to us upon it. We would prefer to proceed, as this court has proceeded all along, in dealing with similar cases in the past, on the footing that article 19 (1) (f) applies equally to concrete as well as abstract rights of property."

(1) [1954] S. C. R. 1005, 1020.

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Though this Court has not finally expressed its opinion on the question raised, it has pointed out that it has proceeded all through on the basis that Art. 19(1) applies equally to concrete as well as abstract rights of property. In *Chiranjit Lal Chowdhuri* v. *The Union of India*(1), Mukherjea, J., as he then was, held that the right to hold property under Art. 19 (1) (f) meant the right to possess as well as enjoy all the benefits which were ordinarily attached to ownership of property. Jagannadhadas, J., in *The State of West Bengal* v. *Subodh Gopal Bose*(2), dealing with this point observed at pp. 668-669:

> "To me, it appears, that article 19(1) (f), while probably meant to relate to the natural rights of the citizen, comprehends within its scope also concrete property rights. That, I believe, is how it has been generally understood without question in various cases these nearly four years in this Court and in the High Courts".

The phraseology used in Art. 19(1)(f) is wide and *prima facie* it takes in its sweep both abstract and concrete rights of property. To suggest that abstract rights of a citizen in property cannot be infringed by the State but his concrete rights can be, is to deprive Art. 19(1)(f) of its real content. It would mean that the State could not make a law declaring generally that a citizen cannot acquire, hold and dispose of property, but it could make a law taking away the property acquired or held by him and preventing him from disposing it of. It would mean that the Constitution-makers declared platitudes in the Constitution while they gave unrestricted liberty to the Legislature to interfere with impunity with property rights of citizens. If this meaning was given to Art. 19(1)(f), the same meaning would have to be given to other clauses of Art. 19(1) with the result that the Legislature cannot make a law preventing generally citizens from expressing their views, assembling peacefully, forming associations, and moving

(1) [1950] S. C. R. 869. (2) [1954] S. C. R. 587, 597.

freely throughout the country, but can make a law curbing their activities when they are speaking, when they are assembling and when they are moving freely in the country. Such an intention shall not be attributed to the Constituent-Assembly, unless the Article is clear to that effect. Indeed, the words, as we have stated, are comprehensive and take in both the rights. Though there is no final expression of opinion by this Court on this question, as has been pointed out, this Court and the High Courts all through since the date of promulgation of the Constitution proceeded on the assumption that Art. 19 applied to both the rights. We hold that Art. 19 applies both to concrete as well as to abstract rights of property.

It is said that if this construction be given to Art. 19(1)(f), Art. 31(1) would become otiose. We do not see how it becomes an unnecessary provision. Article 31(1) is couched in a negative form. It says that no person shall be deprived of his property save by authority of law. In effect it declares a fundamental right against deprivation of property by executive action ; but it does not either expressly or by necessary implication take the law out of the limitations implicit in Art. 19(1)(f) of the Constitution. The law in Art. 31(1) must be a valid law and to be a valid law it must stand the test of other fundamental rights. All the other points urged in support of the contention have been considered by this Court in *Kavalappara Kottarathil Kochuni* v. *The State of Madras*(1), where it was held that a law depriving a person of his property must be a valid law and, therefore, it should not infringe Art. 19 of the Constitution. We have no reason to differ from the view expressed therein. Indeed that view has been followed in later decisions. We, therefore, hold that a law depriving a person of his property would be bad unless it amounts to a reasonable restriction in the

(1) [1960] 3 S. C. R. 887.

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interest of the general public or for the protection of the interests of Scheduled Tribes.

We now come to the last question, namely, whether the 1960 Act deprived the appellants of their right in property. To state it differently, the question is whether a tenant of a non-residential building in Tanjore had acquired a right of property under the 1955 Act and whether he was deprived of that right or otherwise restricted in the enjoyment thereof by the 1960 Act. The 1955 Act, as we have already noticed, conferred two rights on such a tenant, namely, (i) every tenant on ejectment would be entitled to be paid as compensation the value of any building erected by him, and (ii) such a tenant against whom a suit in ejectment has been instituted has an option to apply to the court for an order directing the landlord to sell the land to him for a price to be fixed by the court. We are not concerned here with the rights conferred under s. 3 of the Act, for the simple reason that neither of the appellants claimed a right thereunder. Both of them have taken proceedings only under s. 9 of the Act and they have approached the High Court for a writ of *mandamus* that the petition should be disposed of under the provisions of s. 9 of the Act. 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 s. 3 of the Principal Act is not called for : that will have to be decided in an appropriate case. The question that falls to be considered is whether the second right, namely, the right of a tenant to apply to the court for an order directing the landlord to sell the land to him for a price to be fixed by it, under s. 9 of the Principal Act is a right to property. The law of India does not recognize equitable estates. No authority has been cited in support of the contention that a statutory right to purchase land is, or confers, an interest or a right in property. The fact that the right is created not by

contract but by a statute cannot make a difference in the content or the incidents of the right: that depends upon the nature and the scope of the right conferred. The right conferred is a right to purchase land. If such a right conferred under a contract is not a right of property, the fact that such a right stems from a statute cannot obviously expand its content or make it anytheless a non-proprietary right. In our view, a statutory right to apply for the purchase land is not a right of property. It is settled law that a contract to purchase a property does not create an interest in immovable property. Different consideration may arise when a statutory sale has been effected and title passed to a tenant: that was the basis of the judgment of this Court in *Jayvantsinghji* v. *State of Gujarat*[1], on which Mr. Viswanatha Sastri relied. But we are not concerned here with such a situation. It is said that the appellants have acquired a right under the 1955 Act to hold and enjoy the buildings erected by them by exercising their right to purchase the site of the said buildings and that the impugned Act indirectly deprived them of their right to hold the said buildings. This argument mixes up two concepts, namely, (i) the scope and content of the right, and (ii) the effect and consequences of the deprivation of that right on the other properties of the appellants. Section 9 of the Principal Act, extended by the 1955 Act, only confers a right in respect of the land and not of the superstructure. If that Act held the field, the appellants could have purchased the land, but by reason of the 1960 Act they could no longer do so. Neither the 1955 Act conferred any right as to the superstructure under s. 9 of the Principal Act nor did the 1960 Act take that right away. If this distinction between the land and the superstructure is borne in mind the untenability of the argument would become obvious. The 1960 Act does not in any way affect the appellants' fundamental right. Therefore, their prayer that the District Munsif should be directed to proceed with the

(1) [1962] Supp. 2 S. C. R. 411.

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disposal of the applications filed by them under s. 9 of the Principal Act could not be granted.

In this view it is not necessary to express our opinion on the question whether the appellants, by reason of the specific stipulation in their lease deeds, would not be entitled to any relief even under the 1955 Act. In the result, the appeals fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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September, 26.

Y. LAKSHMINARAYANA REDDY AND OTHERS

v.

THE STATE OF ANDHRA PRADESH

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH AND RAGHUBER DAYAL, JJ.)

Civil Procedure—Irrigation tank—Improving efficiency of—Government proposing alterations—Suit to restrain Government—If barred—Madras Irrigation Tanks (Improvement) Act, 1949 (Mad. XIX of 1949), ss. 3, 4—Madras Irrigation Tanks (Improvement) Rules, 1950, r. 5.

The lands of village Gudur were irrigated by tanks which received water from the Venkatagiri river through the "Gudur anicut system". The Government proposed to make alterations in the Chennur anicut up the river for supplying water to the Chennur tank for irrigating lands of village Chennur. The residents of village Gudur filed a suit for a declaration that the Government had no right to alter or extend or add to the Chennur anicut over the river, and stated in the plaint that it was not necessary to ask for a permanent injunction as the Government was bound to give effect to the declaration granted by the Court.

Held, that the suit was barred by s. 4 of the Madras Irrigation Tanks (Improvement) Act, 1949. Section 4 provided