A P. ANANTHAKRISHNAN NAIR & ANR.

*v.*

DR. G. RAMAKRISHNAN & ANR.

MARCH 31, 1987

B [SABYASACHI MUKHARJI AND K.N. SINGH, JJ.]

*Tamil Nadu City Tenants Protection Act, 1921: ss. 2, 3, 4 and 9—Tenants right to purchase demised land—Nature of—Superstructures constructed thereon in occupation of sub-tenants—Whether tenants entitled to the statutory benefit.*

C

**Section 3 of the Tamil Nadu City Tenants' Protection Act, 1921 provides that every tenant shall on ejectment be entitled to be paid compensation for the value of building which may have been erected by him. Section 9 of the Act, provides that a tenant who is entitled to compensation under s. 3 and against whom a suit for ejectment is instituted may apply for an order that the landlord may be directed to sell the land to him for the price to be fixed by the court.**

D

**The predecessor-in-interest of the appellants had obtained a lease of vacant land in the city of Madras from the ancestors of the respondent-landlords in 1924 and constructed superstructures thereon for carrying on business. The business was, however, discontinued in 1964. A partition suit was filed and the first appellant was appointed receiver. Before a final decree could be passed in that suit, the respondent-landlords served notices on the heirs of the original tenant terminating the lease and later filed ejectment suits against them. Only defendant No. 4 (2nd appellant) and defendant No. 11, advocate receiver (1st appellant) contested the ejectment suits. Ex-parte proceedings were taken against the other defendants. Defendant No. 4 filed an application in each of the ejectment suits claiming the benefit of s. 9 of the Act, with a prayer to the court for directing the landlords to sell the land to the defendants and to appoint a commissioner to ascertain the price.**

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**The Trial Court rejected the application on the findings that the defendants were not in occupation of the property, for they had let out the entire building to sub-tenants except a small portion thereof where the account books were kept, and that the defendants did not require any portion of the land for running their business or for the convenient enjoyment of the superstructures.**

H

On appeal by defendants 4 and 11 under s. 9A of the Act, the appellate authority held that as the defendants had not been in possession and occupation of the premises, they were not entitled to the benefit of s. 9. A

The High Court affirmed the findings of the courts below and dismissed the revision petitions preferred by the appellants. B

Dismissing the appeals, this Court,

HELD: Section 9 of the Tamil Nadu City Tenants Protection Act, 1921 confers a privilege on a tenant, against whom a suit for ejectment has been filed by the landlord to exercise an option to secure conveyance of only such portion of the demised land as would be necessary for his convenient enjoyment. It creates a statutory right to purchase land through the medium of the court on fulfilment of the conditions specified therein. It is not an absolute right, as the court has discretion to grant or refuse the relief for purchase of the land on the facts of a particular case. [743G-H] C D

*S.M. Transport (P) Ltd.* v. *Sankaraswamingal Mutt,* [1963] Suppl. 1 SCR 282, referred to.

The policy underlying s. 9 is directed to safeguard the eviction of those tenants who may have constructed superstructures on the demised land so that they may continue to occupy the same for the purpose of their residence or business. The section contemplates that the tenant requires the land for the convenient enjoyment of the property. Whenever an application is made by tenant before the Court for issuance of direction to the landlord for the sale of the whole or part of the land to him the Court is under a mandatory duty to determine the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. For this determination the Court must hold an enquiry having regard to the area of the demised land and the extent of superstructure standing thereon and the tenant's need for the said land. That inquiry pre-supposes that the tenant making the application has been in occupation of the land and the super-structure wherein he may be either residing or carrying on business and on his eviction he would be adversely affected. The court has to consider the need of the tenant and if it finds that the tenant does not require any part of the land it may reject the application and direct eviction of the tenant. In that event, the landlord has to pay compensation to the tenant for the superstructure. [744G-H; 745A-B] E F G H

**In the instant case, the findings recorded by the courts below clearly show that none of the defendants have been in occupation of the land or the superstructures standing thereon and they have not been carrying on any business therein. The land in dispute and the superstructure have been in occupation of the sub-tenants since 1964. Thus, the tenants could not be said to require the land for their convenient enjoyment. Having regard to these findings and the nature of the tenants' right to purchase land under s. 9 it would be inequitable to direct the landlords to sell the land to the tenants. [745E-G]**

**The price of land, specifically in the urban areas, has escalated to a great extent and it would not be fair to deprive the landlords of their property and to allow the tenants to enrich at the landlord's expense. [745G-H]**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 387-390 of 1977.

From the Judgment and Order dated 30.7.1976 of the Madras High Court in C.R.P. Nos. 1288 to 1291 of 1975.

T.S. Krishnamurthy Iyer, A.T.M. Sampath and Thirumaran for the Appellants.

G.L. Sanghi, P.S. Poti, A.V. Rangam, M.G. Natarajan and T.V. Ratnam for the Respondents.

The Judgment of the Court was delivered by

**SINGH, J.** These four appeals are directed against the common judgment of the High Court of Madras dismissing four Civil Revision Petitions filed by the appellants against the order of the appeal court upholding the order of the Trial Court dismissing their applications made under Section 9 of the Tamil Nadu City Tenants Protection Act 1921.

Briefly the facts giving rise to these appeals are: N.V. Abdullah Sahib predecessor-in-interest of the appellants obtained a lease of about 10 grounds of vacant land situate in the city of Madras from the ancestors of Respondent-landlords in 1924, for carrying on business, he constructed super-structures on the vacant land and carried on business in timber under a partnership firm along with his brother N.V. Ummer Kutty and two minors. The super-structures which were constructed prior to 1954 on the demised land were treated partner-

ship assets along with other properties. After the death of N.V. Abdullah Sahib and N.V. Ummer Kutty the partnership business could not be carried on, as dispute arose between the partners. A suit being Civil Suit No. 152 of 1960 was filed for partition and in that suit defendant Nos. 2 and 4 were appointed joint receivers, subsequently on 7.9.1966 Sri Ananthakrishnan Nair, Appellant No. 1 was appointed Receiver who was authorised to take custody of the account books and to realise rent from the sub-tenants occupying the property which was the subject matter of dispute in the partition suit. The High Court passed a preliminary decree in the partition suit but before final decree could be prepared or finalised, the Respondent-landlords served notices on the heirs of N.V. Abdullah Sahib terminating the lease and demanding surrender of the land. Since the land was not restored to the landlords inspite of termination of the lease, the landlords, in 1972 instituted four suits being Suit Numbers 33 to 36 in the Court of Small Causes at Madras for ejectment against the heirs of N.V. Abdullah Sahib, which included defendant Nos. 1 to 10 and Sri P. Ananthakrishnan Nair, Advocate receiver as defendant No. 11. In the ejectment suits defendant Nos. 1 to 3 and 5 to 10 did not appear or contest the suit, and ex-parte proceedings were taken against them but K.K. Kunhammoo, defendant No. 4 (second appellant) and Sri P. Ananthakrishnan Nair, Advocate-receiver defendant No. 11 contested the ejectment suits. Defendant No. 4, namely, appellant No. 2, filed an application in each of the ejectment suits claiming benefit of Section 9 of the Tamil Nadu City Tenants Protection Act III of 1922 (hereinafter referred to as the Act) with a prayer to the Court for issuing orders directing the landlords to sell the land, to the defendants and to appoint a Commissioner to ascertain the price which the defendants would pay. The Respondent-landlords contested the applications. The Trial Court rejected the application on the findings that the defendants were not in occupation of the property except a small portion where the account books were kept and the defendants did not require any portion of the land for running their business or for the convenient enjoyment of the super-structures. On appeal by the defendant Nos. 4 and 11 under section 9-A of the Act, the appellate authority held that proceedings for ejectment had been taken ex-parte against most of the defendants and persons entitled to the statutory privilege did not exercise their right and further they have not been in possession and occupation of the premises therefore, defendants were not entitled to the benefit of Section 9 of the Act. The appellate court further held that defendant No. 4 (the receiver) was not entitled to maintain an application under Section 9 of the Act on behalf of other defendants. Thereafter both the receivers, defendant Nos. 4 and 11 preferred four

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petitions in revision before the High Court. A learned single Judge by his order dated 30.7.1976 affirmed the orders of the Courts below and dismissed the revision petitions. Aggrieved defendant No. 4 and P. Ananthakrishnan Nair, Advocate-receiver have preferred these appeals against the order of the High Court after obtaining Special Leave.

In the instant case the appellants' application was rejected firstly on the ground that the application made under Section 9 of the Act had not been signed by all the tenants against whom suit for ejectment had been filed by the respondent-landlords. Secondly all the three courts ejected the appellants' application on the findings that the defendants have not been in possession or occupation of the superstructure and they have let out the entire building to sub-tenants, thereby they are not entitled to claim benefit of Section 9 of the Act. As regards the first question the learned counsel for the appellants urged that the application made under Section 9 of the Act was signed by the second Appellant who was defendant No. 4 in the suit. The suit for partition of the property had not been finally decreed and as no final decree had been passed the shares of the defendants had not been partitioned by metes and bounds the property continued to retain its joint status and defendant No. 4 being a co-owner could legally make application on behalf of other co-owners claiming the benefit of Section 9 of the Act. Since there was no conflict of interest among the co-owners, defendant No. 4 being a co-owner could maintain the application not only on his own benefit but also on behalf of all other co-owners as the right of each co-owner extends to every inch of the whole property alongwith the other co-owners. It is always open to a co-owner to conserve the property for the benefit of all other co-owners. The preliminary decree passed in the partition suit did not affect the joint interest of the co-owners as no final decree had been passed in the suit and the property under tenancy continued to be joint. Learned counsel further urged that defendant No. 4 being a party-receiver in the partition suit was entitled to do everything for the conservation and protection of the property for the benefit of the parties to the suit. The court below committed error in rejecting the application on the plea that the same had been signed only by defendant No. 4.

On the other hand, learned counsel for the respondent-landlords urged that the application made by only one of the co-heirs of the deceased N.V. Addullah Sahib, the original tenant, could not be construed as one made on behalf of other co-heirs, as they did not contest

the ejectment suit and ex-parte decree for their eviction had been passed by the trial court which clearly indicate that they were not interested in retaining the property or in continuing possession of the same. Since all the other heirs of N.V. Abdulla Sahib were not interested to contest the suit, defendant No. 4 (Appellant No. 2) could not maintain application under Section 9 of the Act on behalf of other co-heirs and the application made by him did not and could not reflect the desire of other co-heirs who had settled outside the State of Tamil Nadu. The learned counsel further urged that defendant No. 4 though functioning as party-receiver was not authorised to take legal proceedings by filing suit or application on behalf of parties to the partition suit. In the absence of authorisation by the court the defendant. No. 4 had no authority in law to act as agent of other co-heirs. It was further urged that the receiver is an officer of the Court and he is not agent of any party to the suit notwithstanding the fact that in law his position is ultimately treated as an agent of the successful party on the termination of the suit.

We do not consider it necessary to express our opinion on these rival submissions made before us as in our opinion the appeals must fail on the second question which relates to the findings recorded by all the three courts that since the tenants have not been in occupation of the property in dispute, they are not entitled to the benefit of Section 9 which is equitable in nature.

The Tamil Nadu City Tenants Protection Act, 1921 was enacted, as its preamble shows, to give protection to certain classes of tenants in municipal towns and adjoining areas in the State of Madras, who may 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 object of the Act as contained in the objects and reasons of the bill state:

> "In many parts of the City of Madras dwelling houses and other buildings have from time to time been erected by tenants on lands belonging to others, in the full expectation that subject to payment of a fair ground rent, they would be left in undisturbed 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 leased. 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 tenants, if they are evicted, can at the

A best remove the super-structure which can only be done by pulling down the buildings. As a result of such wholesale destruction, congested parts of the city will become more congested to the serious deteriment of public health. In these circumstances it is just and reasonable that the landlords when they evict the tenants should pay for and take
B the buildings. There may however be cases where the landlord is unwilling to eject a tenant, if he can get a fair rent for the land. The Act 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 his predecessors in interest. It also provides for the settlement
C of fair rent at the instance of the landlord or tenant provision is also made to enable the tenant to purchase the land in his occupation subject to certain conditions."

The Act has been subject to several amendments seeking to protect the tenants' interest and also safeguarding landlords' rights in the
D property. It would be profitable to refer to the provisions of the Act highlighting broad aspects of the benefits to a tenant and the rights of the landlords which have been safeguarded. The Principal Act was amended by the Act XIX of 1955 and XIII of 1960 which made comprehensive amendments in the Principal Act of 1921 (Act III of 1922). The Principal Act was further amended by Act IV of 1972 and
E XXIV of 1973. "Landlord" as defined by Section 2(3) means any person owing any land including every person entitled to collect the rent of the whole or any portion of the land whether on his own account or on behalf of or for the benefit of any other person, or by virtue of any transfer from the owner or his predecessor-in-title or of any order of a competent court or of any provision of law. "Tenant" as
F defined by Section 2(4) means a person liable to pay rent in respect of such land under a tenancy agreement express or implied and it also includes any person who continues in possession of the land after determination of the tenancy agreement. Section 3 provides that 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
G the value of trees which may have been planted by him in a suit for ejectment. If the landlord's suit for ejectment is decreed the court is required to ascertain the amount of compensation payable under Section 3 and it shall thereupon pass a decree for the amount so found due and direct that on payment of the amount by the landlord within three months from the date of decree the tenant shall put the landlord into
H possession of the land along with the building and trees thereon, as

provided by Section 4 of the Act. Section 5 provides for determination of compensation to the tenant. If the landlord is unable or unwilling to pay compensation as directed by the Court he may apply to the Court for fixation of reasonable rent for the occupation of the land by a tenant in accordance with Section 6 of the Act. Section 9 provides that a tenant who is entitled to compensation under Section 3 and against whom a suit for ejectment is instituted may apply for an order that the landlord may be directed to sell the land to him for the price to be fixed by the Court, and thereupon the Court shall fix the price in the manner prescribed therein 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. Section 11 provides that no suit for ejectment shall be instituted against the tenant except after giving three months notice requiring him to surrender possession of the land, building and trees to the landlord. These provisions broadly seek to recapitulate the objects and reasons as quoted earlier by protecting the tenant from eviction who may have constructed super-structure on the land demised to him and it further safeguards the landlord's interest by making provision for payment of the price of the land to him by the tenant.

In the instant case since the tenant's right to purchase the land is involved we would refer to the provisions of Section 9 of the Act in detail, which reads as under:

> "9. Application to Court for Directing the Landlord to Sell Land: (1) (a) (i) Any tenant who is entitled to compensation under section 3 and against whom a suit in ejectment has been instituted or proceeding under section 41 of the Presidency Small Causes Courts Act 1882, taken by the landlord may, within one month of the date of the publication of the Madras City Tenant's Protection (Amendment) Act 1979 in the Tamil Nadu Government Gazette or of the date with effect from which this Act is extended to the municipal town, township or Village in which the land is situate or within one month after the service on him of summons, 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 extent of land specified in the application.
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> (ii) Notwithstanding anything contained in clause (a) (i) of this sub-section, any such tenant as is referred to in

A sub-clause (ii) (b) of clause (4) of Section 2 or his heirs, may within a period of two months from the date of the publication of the Madras City Tenants' Protection (Amendment) Act 1973 apply to the Court (whether or not a suit for ejectment has been instituted or proceeding under Section 41 of the Presidency Small Causes Courts B Act 1882 (Central Act XV of 1882) has been taken by the landlord or whether or not such suit or proceeding is pending having jurisdiction to entertain a suit for ejectment or in the City of Madras either to such court or to the Presidency Small Causes Court for an order that the landlord under the tenancy agreement shall be directed to sell for a C price to be fixed by the Court the whole or part of the extent of land specified in the application.

(b) On such application the Court shall first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. The Court shall, then D fix the price on the minimum extent of the land decided as aforesaid or of the extent of the land specified in the application under clause (a) whichever is less. The price aforesaid shall be the average market value of the three years immediately preceding the date of the order. The Court shall order that within a period to be determined by the E Court not being less than three months and not more than three years from the date of the order of the tenant shall pay into Court or otherwise as directed the price so fixed in one or more instalments with or without interest.

(2) In default of payment by the tenant of any one instal- F ment, the application under clause (a) of sub-section (1) shall stand dismissed, provided that on sufficient cause being shown, the Court may excuse the delay and pass such orders as it may think fit, but not so as to extend the time for payment beyond the three years above mentioned. On the application being dismissed, the Court shall order the G amount of the instalment or instalments if any, paid by the tenant to be repaid to him without any interest.

(3) (a) On payment of the price fixed under clause (b) of sub-section (1), the Court shall pass an order directing the conveyance by the landlord to the tenant of the extent of H land for which the said price was fixed. The Court shall by

the same order direct the tenant to put the landlord into possession of the remaining extent of the land, if any. The stamp duty and registration fee in respect of such conveyance shall be borne by the tenant. A

(b) On the order referred to in clause (a) being made the suit or proceeding shall stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated. B

Once a suit is filed by the landlord for the eviction of a tenant from land the tenant has right to apply to the Court within one month from the date of the service of summons for the issuance of order directing the landlord to sell the whole or part of the extent of land as specified in the application to him for a price to be fixed by the Court. C On making of such an application the Court is under a mandatory duty to first decide the minimum extent of the land "which may be necessary *for the convenient enjoyment by the tenant.*" (emphasised). The court must hold enquiry to determine whether the tenant requires the D land for his convenient enjoyment, and if so, what area or portion of the land would be necessary for his convenient enjoyment. The court may on the facts of a particular case come to the conclusion that the tenant does not require any portion of the land and in that event it may reject the application and decree the suit for ejectment and direct the landlord to pay compensation to the tenant. But if the court finds that E the tenant needs the whole or any portion of the demised land for "convenient enjoyment", the Court has to fix the price of the land on the basis of market value of three years immediately preceding the date of the order. The Court may thereupon direct the tenant to deposit the amount so determined within a specific period not being less than three months and not more than three years. If the tenant F fails to pay the amount so determined, the tenant's application shall stand dismissed.

Section 9 confers a privilege on a tenant against whom a suit for eviction has been filed by the landlord but that privilege is not absolute. Section 9 itself imposes restriction on the tenant's right to secure G conveyance of only such portion of the holding as would be necessary for his convenient enjoyment. It creates a statutory right to purchase land through the medium of court on the fulfilment of conditions specified in Section 9 of the Act. It is not an absolute right, as the court has discretion to grant or refuse the relief for the purchase of the land. In *S.M. Transport (P) Ltd.* v. *Sankaraswamingal Mutt*, [1963] Suppl 1 H

A SCR 282 this Court considered the question whether the right of a tenant to apply to a court for an order directing the landlord to sell the land to him for a price to be fixed by it under Section 9 of the Act is a property right. The Court held, that the law of India does not recognise equitable estates, a statutory right to purchase land does not confer any right or interest in the property. The right conferred by B Section 9 is a statutory right to purchase land and it does not create any interest or right to the property. The tenant's right to secure only such portion of the holding as may be necessary for his convenient enjoyment is equitable in nature. Under the common law a tenant is liable to eviction and he has no right to purchase the land demised to him at any price as well as under the Transfer of Property Act. The only right of a C tenant who may have put up structure on the demised land is to remove the structure at the time of delivery of possession on the determination of the lease. Section 9 confers an additional statutory right on a tenant against whom suit for ejectment is filed to exercise an option to purchase the demised land to that extent only which he may require for convenient enjoyment of the property. The tenant has no D vested right in the property instead; it is a privilege granted to him by the statute which is equitable in nature.

Whenever an application is made by a tenant before the Court for issuance of direction to the landlord for the sale of the whole or part of the land to him, the Court is under a mandatory duty to E determine the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. This determination can obviously be made only after an enquiry is held by the Court having regard to the area of the demised land and the extent of super-structure standing thereon, and the tenant's need for the land for the beneficial enjoyment of the super-structure which he may have constructed F thereon. The enquiry pre-supposes that the tenant making the application has been in the occupation of the land and the super-structure wherein he may be either, residing or carrying on business, and on his eviction he would be adversely affected. The policy underlying Section 9 of the Act, is directed to safeguard the eviction of those tenants who may have constructed super-structure on the demised land, so that they G may continue to occupy the same for the purposes of their residence or business. Section 9 (1) (b) ordains the court to first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant, it therefore contemplates that the tenant requires the land for the convenient enjoyment of the property. If the tenant does not occupy the land or the super-structure or if he is not residing H therein or carrying on any business, the question of convenient enjoy-

ment of the land by him could not arise. The Court has to consider the need of the tenant and if it finds that the tenant does not require any part of the land, it may reject the application and direct eviction of the tenant, in that event the landlord has to pay compensation to the tenant for the superstructure.

In the instant case, admittedly the land in dispute was leased out to N.V. Abdullah Sahib for carrying on business, the Trial Court as well as the First Appellate Court both have recorded concurrent findings of fact that the business which was being carried on by N.V. Abdullah Sahib and his heirs was discontinued in 1964, and except for defendant Nos. 4 and 7, all other defendants have settled down outside Madras and they were not occupying the land or the building thereon nor they were carrying on any business in any portion of the building on the date of filing of the ejectment suit. Only in a small portion of the entire land account books of the business was kept and the rest of the land and the super-structure standing thereon has been in the occupation of sub-tenants since 1964. The Courts have further recorded findings that except defendant No. 4 (Appellant No. 1) other defendants are not interested as they did not contest the landlords' suit for eviction. These findings clearly show that the none of the defendants have been in occupation of the land of the super-structure standing thereon and they have not been carrying on any business therein. Even in the ejectment suits, barring defendant No. 4 none appeared to contest the suit and ex-parte proceedings were taken against them. The Trial Court as well as the appeal court both have recorded findings that the land in dispute and the super-structure has been in occupation of sub tenants since 1964. In view of these findings the High Court refused to interfere with the orders of the Trial Court as confirmed by the appeal court. Having regard to these findings and the nature of the tenants' right to purchase land under Section 9 being equitable in nature, it would be unreasonable to direct the landlord to sell the land to the tenants. The facts and circumstances available on record show that the tenants do not require the land for their convenient enjoyment, therefore, it would be inequitable to direct the landlords to sell the property to the tenants. It is a matter of common knowledge that price of land, specially in the urban areas has escalated to a great extent and it would not be fair to deprive the landlords of their property and to allow the tenants to enrich at the landlords' expense. The law does not intend that the tenant should enrich at the instance of the landlord even though the tenants do not require the land for their convenient enjoyment.

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A We do not therefore find any good reason to interfere with the High Court's order dismissing the appellants revision application. We accordingly dismiss these appeals but make no order as to costs.

P.S.S. Appeals dismissed.