R. VENKATASWAMI NAIDU AND ANOTHER

v.

NARASRAM NARAINDAS

April 27, 1965

[A. K. SARKAR, K. SUBBA RAO, M. HIDAYATULLAH AND J. R. MUDHOLKAR, JJ.]

Madras City Tenants Protection Act, 1922, *ss.* 2(4), 3, 9 *and* 12—*Tenants building on land in breach of covenant whether entitled to benefits under ss.* 3 *and* 9.

The appellants were tenants who held over after the expiry of their lease and built structures on the land in breach of a covenant not to build. In a suit for their ejectment they asked the Court to direct the landlord to sell the land to them under s. 9 of the Madras City Tenants Protection Act, 1922 which had, pending the suit, been extended to the area. The benefit under s. 9 was available to tenants who were entitled under s. 3 to compensation for their structures. According to s. 3 every tenant would on ejectment be entitled to be paid as compensation the value of any building which may have been erected by him. The appellant's claim to the benefit under s. 9 was accepted by the trial Court, the first appellate Court and a single Judge of the High Court. But in the Letters Patent Appeal the Division Bench took the view that since a covenant not to build is enforceable in law and a superstructure in contravention of it is liable to be demolished it would be anomalous to compensate the tenant under s. 3 for such a structure, and therefore s. 3 could not be applicable to tenants who built structures in breach of their covenant. It also took note of the words in the preamble that the Act was intended to protect tenants who had constructed buildings on others lands "in the hope that they would not be evicted."

HELD : (i) The covenant entered into by the tenants could not be taken into account for the purpose of construing the scope of s. 3. The High Court had fallen into this error. [115F]

(ii) The word 'tenant" in s. 3 must be understood only in the sense that the word is defined in the Act. There is no reason for saying that the word 'tenant' in s. 3 excludes tenants who put up structures on the land in breach of a covenant not to build. [114 C-D]

(iii) A covenant not to buid, if it could affect the right of the tenant to claim compensation under s. 3, would be of no effect for under s. 12 nothing in any contract shall take away a tenant's rights under the Act. Therefore in spite of the covenant the tenants were entitled to their rights under s. 3 and s. 9. [114 F-G]

(iv) Since the language of s. 2(4) and ss. 3 and 9 was clear and unambiguous there was no need to resort to the preamble for interpreting these sections. A preamble cannot operate to annul a section. [115 C-D]

N. Vajrapani Naidu v. *New Theatre Carnatic Talkies Ltd.*, A.I.R. (1964) S.C. 1440, referred to.

Per Hidayatullah, J. (i) Section 3 is general and applies to every tenant and would include all and sundry tenants as also tenants holding over. [117D]

A (ii) The kind of building hinted at in the preamble namely, one constructed "in the hope" of the continuance of the tenancy does not find any mention in the operative part of the Act or in the definition of building. It is therefore difficult to read this limitation (as was contended) in ss. 3 and 9 where 'building' is used without any qualification and implies only a construction. [118 F-G]

Deo v. *Brandling*, (1828) 7 B & C, 643, referred to.

B (iii) Sections 3 and 9 are imperative and s. 9 is expressly made applicable to pending suits in ejectment such as the present one. Appellants made application under s. 9 within the time limited therefor. The result must obviously follow unless the latter part of s. 12 could save the respondent. That could only be if the stipulations by the tenant not to build had been 'in writing registered', but the lease-deed in question, though in writing, is not registered. [119 B-C]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 146 of 1965.

Appeal from the judgment and order dated September 21, 1962 of the Madras High Court in L.P.A. No. 29 of 1961.

D *P. Ram Reddy* and *R. Ganapathy Iyer*, for the appellants.

C. B. Agarwala and R. Gopalakrishnan, for the respondents.

The Judgment of Sarkar, Subba Rao and Mudholkar, JJ. was delivered by Sarkar J. Hidayatullah J. delivered a separate Opinion.

E **Sarkar J.** By an unregistered instrument of lease dated February 3, 1953, the respondent let out a piece of vacant land in the town of Coimbatore to the appellants for the term of one year at a rent of Rs. 30/- per month. The tenants held over after the expiry of the term reserved and the tenancy was continued. The lease provided that the tenants "shall not raise any building whatsoever in the vacant site" but they committed a branch of the covenant by putting up a building on the land.

F

On December 4, 1956, the lessor filed a suit for ejectment of the tenants and their sub-tenants. Pending the suit, the Madras City Tenants' Protection Act, 1921, was on February 19, 1958 G made applicable to the town of Coimbatore and thereupon the tenants made an application in the suit under s. 9 of the Act for an order directing the lessor to sell the land to them. The trial Court, a learned Sub-Judge in first appeal and Anantanarayanan J. in second appeal to the High Court of Madras held that the tenants were entitled to the order. A Division Bench of the High Court H took a contrary view in a Letters Patent Appeal preferred by the lessor. The tenants have appealed to this Court against the judgment of the Division Bench.

The question naturally turns upon the provisions of the Act the relevant parts of which we will, therefore, set out at once.

S. 2 (4). "Tenant means tenant of land liable to pay rent on it....."

S. 3. "Every tenant shall on ejectment be entitled to be paid as compensation the value of any building which may have been erected by him."

S. 9. "Any tenant who is entitled to compensation under section 3 and against whom a suit in ejectment has been instituted....may.....apply to the court for an order that the landlord shall be directed to sell....the extent of land to be specified in the application."

S. 12. "Nothing in any contract made by a tenant shall take away or limit his rights under this Act, provided that nothing herein contained 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."

It will be noticed that a tenant entitled to purchase under s. 9 must be a tenant entitled to compensation under s. 3. The real question, therefore, is whether the tenants in the present case were entitled to compensation under s. 3. We may observe that we shall not in the present case be concerned with the proviso to s. 12 as the lease was not by a registered document and hence references in this judgment to that section will be to that section without the proviso. We should also state that by virtue of s. 10, s. 9 is applicable to suits pending in Coimbatore courts when the Act was applied to that city.

It was not disputed in this Court that if the covenant was left out of consideration, the tenants would be entitled to the benefit of ss. 3 and 9. They would be tenants within the definition of that word in the Act and the ingredients of the other two sections would be fully satisfied. The learned Judges of the Division Bench also accepted this position.

The question then is, Does the covenant make any difference? The learned Judges thought, in our opinion wrongly, that it did. They put the matter in this way: A covenant not to build is valid. If it is valid, it must be enforceable all along and, therefore, also after the termination of the lease by an order for demolition. If it can be so enforced, s. 3 which gives the tenant a right to compensation for the building cannot be applicable to a case where

A there was such a covenant for the Act could not at the same time have countenanced a compulsory demolition of a building at the instance of the lessor and a right in the tenant to compensation for that building. The enforceability of the covenant, therefore, indicated the scope of s. 3 in spite of its wide terms and the equally wide definition of the word "tenant" in the Act. That scope was
B that the section had no application here there was such a covenant. Learned counsel for the lessor advanced the same reasoning summarising the position by the observation that the erection contemplated by s. 3 was a lawful erection, that is, not in breach of any covenant not to build.

C It seems to us that this reasoning is clearly fallacious. The learned Judges held that the covenant not to build was valid. They, therefore, must have held that it did not affect a right under s. 3 for if it did, it must have been ineffective under s. 12. Now when the learned Judges held that the covenant did not affect the right under s. 3, they must have decided what that right was and who
D were the tenants entitled to it. In deciding the validity of the covenant they must, therefore have fully and finally interpreted the section and decided its scope and effect. After that they could not again proceed to ascertain the scope of the section. But this is what they did and this is where their principal error lay. Basing themselves on one interpretation of the section they held the coven-
E ant to be valid and basing themselves on the validity of the covenant so found, they gave the section a second and a different interpretation. In deciding the validity of the covenant they had not said that s. 3 had no application where the covenant existed. If they had, they would have decided what they called the scope of the
F section without any aid from the covenant and there would have been no need for deciding the scope of the section again on the basis of the validity of the covenant. Therefore, on the second occasion they found the scope to be different from what they had found it to be on the first occasion. But, of course, a section has only one interpretation and one scope; a process resulting in more
G than one interpretation and scope is clearly erroneous.

Now when deciding that the covenant did not affect the right of tenants under s. 3 and was, therefore, valid, the learned Judges did not say that a tenant who built in breach of it was not a tenant as contemplated by s. 3 and was not entitled to its benefits; in fact they expressly took a contrary view. They said, and in our view
H *rightly, "there* is no *express* provision in the Act, limiting the operation of section 3.....to the tenants who were authorised by the terms of the lease to put up a building. *Prima facie,*

therefore, the term 'tenant' might not exclude one who puts up a superstructure on the land in breach of a covenant not to build." They stated that this was the view to be gathered from a consideration of the entire Act. But clearly there was nothing else they could legitimately consider for interpreting s. 3. It would, therefore, appear that the words *"prima facie"* with which they qualified their observation were inapposite. In effect then the learned Judges said this : The contract was valid as it did not affect the right under s. 3 of any tenant as defined in the Act and since the contract was valid, a tenant who had built in breach of it was not entitled to any right under s. 3. This is a wholly untenable proposition.

We think that the word "tenant" in s. 3 must be understood only in the sense that that word is defined in the Act. We repeat that there is no reason for saying that the word "tenant" in s. 3 does not include all tenants as defined in the Act. None has been shown apart from that given by the learned Judges which we think is ill founded. Therefore the appellants are tenants as contemplated by s. 3. Now the covenant says that the tenants shall not build. Either that affects the right of the tenants to claim compensation for the buildings constructed in breach of it at the termination of the lease or it does not. If it does not, then no further question arises; there will then be nothing purporting to disentitle the tenants of their rights under s. 3 and the case will be the same as where there is no covenant at all. If such is the case then, as we have said earlier, there is no dispute that the tenants are entitled to their rights under ss. 3 and 9. If however, the covenant not to build affects the right to claim compensation under s. 3, such a covenant would be of no effect, for under s. 12 nothing in any contract shall take away a tenant's rights under the Act. The case will then also be the same as if there was no covenant at all. That is why we think that the covenant not to build does not affect the question in hand. The tenants must be held entitled to their rights under ss. 3 and 9 in spite of the covenant not to build and a breach of it by them.

Before Anantanarayanan J. the argument for the lessor was somewhat different. It was said that s. 3 had to be read in harmony with the general law, that is, s. 108(h) of the Transfer of Property Act, which gave the tenant a right to build when the lease did not prohibit building and, therefore, the erection under s. 3 must be one permitted by law. The learned Judge rejected this contention, in our opinion rightly, on the ground that s. 3 and

A s. 9 contained no words justifying it and under s. 12 no contract could be made affecting the sections earlier mentioned. He also pointed out that s. 13 of the Act specifically provided that the Transfer of Property Act must be deemed to have been repealed to the extent necessary to give effect to the Act so that there was no scope for harmonising the Act with the Transfer of Property Act.
B We entirely agree with the learned Judge's views. We must however observe that this argument was not advanced in this Court.

Before leaving this matter a reference to the preamble of the Act is necessary. It states that the Act was passed "to give protection to tenants who .....have constructed buildings on others'
C lands in the hope that they would not be evicted." The learned Judges of the Division Bench found it to be too vague to be taken as defining a definite ascertained class of tenants. In any case, no resort to the preamble would, we think, be justified in interpreting the definition of tenant in s. 2(4) as the words used in it are clear and unambiguous. We observe that the language used in ss. 3 and
D 9 also admits of no doubt as to the meaning intended. A preamble cannot of course operate to annul a section. We must here also say that learned counsel for the lessor did not rely on the preamble to support his contention.

E We think it right to point out before we conclude that *N. Vairapani Naidu* v. *New Theatre Carnatic Talkies Ltd.* to which our attention was drawn, does not touch the point with which we are concerned, for it turned on the proviso to s. 12 and that proviso has no application to the present case.

F For these reasons we think that the judgment under appeal was erroneous and must be set aside. We agree with Anantanarayanan J. that the appellant tenants had a right under s. 9 of the Act to purchase the land leased in spite of the covenant not to build and the breach of it by them. The covenant cannot be used for interpreting s. 3 or s. 9.

G The appeal is allowed. The judgment of the Division Bench is set aside and that of Anantanarayanan J. is restored. The appellants will get the costs in this Court and in the Division Court.

Hidayatullah, J. I agree that this appeal must succeeded but I would like to state the reasons somewhat differently. Appellants 1
H and 2, who were tenants of the respondent landlord, seek the enforcement of s. 9 of the Madras City Tenants' Protection Act, 1921, which was extended to Coimbatore on February 19, 1958. By a

written (but not registered) lease-deed the appellants 1 and 2 took on lease for a year from February 10, 1953, a vacant site on a rent of Rs. 35 per month. The lease-deed contained a term that no building should be built on the land. Without the knowledge and consent of the landlord the appellants 1 and 2 built structures on the vacant site and continued to hold over even after the expiry of the year. They inducted sub-tenants. The respondent-landlord sued in ejectment in 1956 and the suit stood closed for arguments on February 25, 1958. On that date appellants 1 and 2 applied under s. 9 of the above Act claiming the right to purchase the land. The case was re-opened and some more evidence was received. The District Munsif, Coimbatore by his judgment dated April 8, 1958 accepted the claim of appellants 1 and 2 and took action to determine the price for the land as required by the Act. An appeal by the respondent-landlord before the Subordinate Judge, Coimbatore and a second appeal in the High Court failed. The present appeal is from the judgment dated September 21, 1962 of the Division Bench in an appeal filed under cl. 15 of the Letters Patent and by certificate from the Division Bench. By that judgment the decision of the Single Judge was reversed and the application under s. 9 of the Act was ordered to be dismissed. There was, however, a remit for disposal on other points.

The Act which is relied upon by the appellants is an Act which was intended to apply in the first instance to the Madras City but could be extended to other towns and villages. It was, as the long title shows, intended "to give protection to certain classes of tenants in Municipal towns and adjoining areas in the State of Madras". The last eleven words were substituted for the words "in the City of Madras" by an amending Act of 1955. The preamble of the Act reads :

> "Whereas it is necessary to give protection to 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 pay a fair rent for the land;.....".

The words underlined were substituted for the words "in many parts of the city of Madras" by the same amending Act.

The Act defines the word "building" so as to include every structure, permanent or temporary and 'land' to exclude "buildings" and "tenants" as "tenant of land liable to pay rent on it, every person deriving title from him", and including "persons who con-

A tinue in possession after the termination of the tenancy". The appellants 1 and 2 were thus tenants of land excluding the buildings. The Act then give new rights of various sorts to tenants, and some of the sections are set out below :

"3. Payment of compensation on ejectment.

B Every tenant shall on ejectment be entitled to be paid as compensation the value of any building, which may have been erected by him, by any of his predecessors-in-interest, or by any person not in occupation at the time of the ejectment who derived title from either of them, C and for which compensation has not already been paid. A tenant who is entitled to compensation for the value of any building shall also be paid the value of trees which may have been planted by him on the land (and of any improvements which may have been made by him)."

D The section is general and applies to every tenant and would include all and sundry tenants as also tenants holding over. In other words, the appellants would be included. Sections 4 and 5 lay down the procedure for determination of compensation. Section 6 provides for determination of rent. They are not relevants E here and we are not concerned with ss. 7, 7A and 8. Section 9 (omitting portions not relevant here) then states :

"9. Application to court for directing the landlord to sell land.

(1) Any tenant who is entitled to compensation under section 3 and against whom a suit in ejectment has been F instituted or proceeding under section 41 of the Presidency Small Cause Courts Act, 1882, taken by the landlord, may, within one month of the date of Madras City Tenants' Protection (Amendment) Act, 1955, coming into force or of the date with effect from which this Act is extended to the municipal town or village in which the G 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 the land for a price to be fixed by the court. The court shall fix the price according to the lowest market value prevalent within seven years preceding the date of the order and shall H order that, within a period to be determined by the court, not being less than three months and not more than three years from the date of the order, the tenant

shall pay into court or otherwise as directed the price so fixed in one or more instalments with or without interest. A

(2) . . . . . .

(3) On payment of the price the court shall pass a final order directing the conveyance of the land by the landlord to the tenant. On such order 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

. C

Section 10 expressly applies ss. 4, 5, 6, 8 and 9 to pending suits in ejectment and to decrees passed in such suits but not yet executed. Section 12 provides as follows :

"12. Effect of contracts made by tenants.

Nothing in any contract made by a tenant shall take away or limit his rights under this Act, provided that nothing herein contained 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." D

Section 13 provides that the provisions of the Transfer of Property Act in its application to the area where the Act was in force, to the extent necessary to give effect to the provisions of the Act, shall be deemed to have been repealed or modified. The Act is thus self-contained and the ordinary law of transfer of property has no application. E

F

The first point to notice is that the kind of building hinted at in the preamble, namely, one constructed "in the hope" of the continuance of the tenancy does not find any mention in the operative part of the Act or in the definition of building. It is, therefore, difficult to read this limitation (as was contended) in ss. 3 and 9 where "building" is used without any qualification and implies only a construction. A preamble is a key to the interpretation of a Statute but is not ordinarily an independent enactment conferring rights or taking them away and cannot restrict or widen the enacting part which is clear and unambiguous. The motive for legislation is often recited in the preamble but the remedy may extend beyond the cure of the evil intended to be removed. See Maxwell on Interpretation of Statutes, 11th Edn. p. 45. If the enacting portion takes in all buildings without qualification, it is G H

A not possible to give the less extensive import of the preamble a greater value against the enacted provision. *See Deo* v. *Brandling* —(1828) 7 B & C 643, 660 per Lord Tenterden.

What then is the position ? Sections 3 and 9 are imperative and s. 9 is expressly made applicable to pending suits in eject-
B ment such as this was. Appellants 1 and 2 made the application within a week of the extension of the Act to Coimbatore and were within the time limited for their action. The result must obviously follow unless the latter part of s. 12 can save the respondent. That can only be if the stipulations by the tenant as to the erection of the building in so far as they related to buildings erected after the
C date of the lease-deed had been "in writing registered". The lease-deed is in writing but is not registered. By the first part of s. 12 the tenant is protected against his own contract. The landlord is protected by the second part, but the landlord here cannot seek the protection of the second part because the lease-deed is not registered.

D The appellants also claimed that the words "stipulations as to the erection of buildings" cannot take in a covenant not to construct at all, as laid down in *N. Vajrapani Naidu and Another* v. *New Theatres Carnatic Talkies Ltd.*(1). The ruling certainly is in the appellants' favour but it is not necessary to rely on it for the
E disposal of this case. As at present advised, I would not like to rest my judgment on that point of view.

I agree with the order proposed but for the reasons given here.

Appeal allowed.

(1) A.I.R. 1964 S.C. 1440.