

Madras High Court

G. Lakshmi Ammal vs Elumalai Chettiar And Ors. on 30 April, 1980

Equivalent citations: (1980) 2 MLJ 480

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ORDER T. Sathiadev, J.

1. The point involved herein is whether by invoking Section 24(1)(b) of the Civil Procedure Code, a proceeding pending before a Rent Controller constituted under Act XVIII of 1960(hereinafter referred to as the Act) can be transferred to another Rent Controller. The main opposition to this petition is stemmed on the claim that the Rent Controller and Appellate Authority constituted under Act XVIII of 1960 are 'personae designatae' and they are not Courts which are subordinate to the High Court, and that they will not come within the expression 'other proceedings' as contemplated under Section 24(1) (b) of the Civil Procedure Code. It is further claimed that when an application filed for transfer under Rule 17 of the Rules framed under the Act having been rejected, the present application under Section 24, Civil Procedure Code, is not maintainable.

2. On the first point as to whether Rent Controller is a Court or personae designatae, Mr. Sivamani relies upon the following decisions to contend that whatever view might have been taken hitherto, in view of the decision rendered in The Kerala State Electricity Board v. T.P. Kunhaliumona . when the Rent Controller functions like a Civil Court, it cannot any longer be held that he functions as a personae desitgnatae. In support of his contention, he refers to the decision of the Division Bench arising under Madras Buildings (Lease and Rent Control) Act, XV of 1946, in V. Venugopal Naidu v. The Third Judge of Small Causes Court (1949) 1 M.L.J. 471 : 62 L.W. 285 : I.L.R. (1950) Mad. 28 : A.I.R. 1949 Mad. 776, wherein it was held that the Court of Small Causes, which was constituted as an appellate authority under the Act, was only a Court. The expression 'authorities' used in Section 12(1) (a) of the Act was held to cover "Courts already in existence". Relying upon the decision reported in Krishnan Nair v. Valliammal (1949) 1 M.L.J. 74 : (1949) M.W.N. 43 : A.I.R. 1949 Mad. 785, which also arose under the earlier Act, he claims that 'Judge of the Small Causes Court,' who is authorised to function as Rent Controller, is not a personae designatae since he was functioning as part of the Small Causes Court. By referring to the decision in Central Talkies Ltd., Kanpur v. Dwaraka Prasad , in which the scope of the powers exercised by the District Magistrate under U. P. Act (III of 1947) was considered and wherein it was held that permission granted by an Additional District Magistrate pursuant to the notification made by the State investing him with all the powers of the District Magistrate under the Code as well as under, any other law including the Eviction Act, made him a Court and not a personae designatae. In dealing with what functionaries can be treated as personae designatae, it was held that:

A person who is pointed out or described as an individual as opposed to a person ascertained as a member of a class, or as filling a particular character.

is a personae designatae. What was held in Partha Sarathi Naidu v. Koteswara Rao , to the effect that personae designa tae are persons selected to act in their private capacity and not in their capacity as Judges, was adopted in that decision. Proceeding further he relies on the decision in Pitambar v. Hargovanbhai , for understanding the scope of the words " A Court of Small Causes" occurring in

Section 24(4) of the Code of Civil Procedure, wherein it was held that it would include both Court of Small Causes constituted under the Provincial Small Causes Court Act as well as a Court invested with the jurisdiction of a Court of Small Causes.

3. The decision of the Supreme Court in *Ramachandra v. U.P. State*, was relied upon by him for the proposition that where a special or local statute refers to a constituted Court as a Court, and does not refer to the Presiding Officer of the Court, the reference cannot be said to be of a *personae designatae*, and that the provisions of the Civil Procedure Code supplied generally to a proceeding before a civil Court arising out of a reference made by a Magistrate under Section 146(1) of the Criminal Procedure Code, and hence the term 'proceeding' used in Section 24 of the Civil Procedure Code is comprehensive enough to include all matters coming up for judicial adjudication and not confined to civil proceedings alone, and therefore when the Magistrate makes a reference it relates to a civil Court and there is no question of *personae designatae* involved thereon. To strengthen his contention that Rent Controller is only a Court, he relied on the decision in *G.D. Malleswara Rao v. Ranga Punaiah* (1974) 2 An.W.R. 189, wherein it was held that the Rent Controller being a Court, Section 5 of the Limitation Act would apply. Likewise, a Full Bench decision in *Surindra Mohan v. Dharam Chand* A.I.R. 1971 J. & K. 76, is also relied upon to contend that when a Chief Judicial Magistrate is appointed by designation, and not by name, he is not a *personae designatae* but only a Court. The Full Bench held that the following aspects had to be taken into account to find out the nature of powers exercised they being. (1) nature of duties performed and the manner in which appointment is made; (2) whether appointment is by name in his individual capacity or with reference to his post; (3) whether the authority selected is a member of the Court or not; and (4) whether he has been empowered to act judicially and possess all the trappings of a Court and is to abide by the rules of evidence and dispose of the matter like a Court. If on these aspects considered the ultimate conclusion is that the named authority is to function like a Court, it cannot any longer be claimed that he is a *personae designatae*.

4. Before completing his citation of catena of cases, he would refer to the decision rendered in *Krishnan Gopal v. Dattatraya*, arising under Motor Vehicles Act, wherein it was held that a statutory tribunal whatever name by which it may be designated would be treated as a Court, if it is called upon to discharge judicial functions and in reaching its conclusions it is required to follow well-recognised judicial principles. In contradistinction in *L. Misra v. K.N. Gupta* A.I.R. 1974 Raj. 55, it was held that Claims Tribunal under the said Act is not a Court and therefore no petition under Section 24 of the Civil Procedure Code can be filed. After placing reliance on these decisions, in conclusion Mr. Sivamani laid considerable reliance on the pronouncement of the Supreme Court in *Kerala S.E. Board v. T.P. Kunhaliumona*, wherein in dealing with the provisions of the Telegraph Act, it was held that the District Judge empowered to function under the said Act is a civil Court, when he disposes of the applications under Section 16 of the Act. He would draw my attention to the fact that in this case the Supreme Court has differed from the view taken in *Athani Municipality v. Labour Court, Hubli*, and which was one of the decisions relied upon by this Court in *S. Ganapathy v. N. Kumaraswami*, wherein it was held that Rent Controller and the Appellate Authority under the Act are *personae designatae*. In finding out whether an authority constituted under a statute is to function as a *personae designatae* or a Court, it was held that so far as Telegraph Act is concerned, even in Section 16, there is intrinsic evidence to make out that he is to function as a Court. Reference

was also made to Section 16(4) of Telegraph Act which requires payment into Court under Section 34 which contemplates payment of court-fees and the issue of process which all suggest that the ordinary machinery of a civil jurisdiction is made available for the settlement of the disputes under the Act. By referring to these conclusions, Mr. Sivamani contends that if the decisions relied upon by him are applied in respect of the powers exercised by the Rent Controller and the Appellate Authority under Act XVIII of 1960, necessarily they function like civil Courts and when civil Judges are called upon to discharge these functions with all the incidents of a Court, the view taken hitherto by this Court that they are personae designatae, can no longer survive.

5. The decisions above referred to are to the effect that the authority invested with powers to decide the matters arising under statutes, will not be personae designatae if they are to function like a Court. So far as Act XVIII of 1960 is concerned under Section 2(3), Controller is defined:

6. "Controller" means any person appointed by the Government by notification to exercise the powers of a Controller under this Act for such area as may be specified in the notification. Section 23 empowers the Government by general or special order to notify conferment of powers of the Appellate Authority on such officers and authorities as they may think fit in such areas and such classes of cases as may be specified in the Order. In two notifications made in II-1 No. 3006(e) of 1973 and II-1 No. 3006(/) of 1973, certain Judges of the Small Causes Court for the City of Madras and District Munsifs in certain Districts are to function as Rent Controllers, and likewise certain other Judges of the Small Causes Court for the City of Madras and Subordinate Judges in certain Districts have been notified as the Appellate Authorities. Though in the notification, Judges have been designated as authorities to function under the Act, he would refer to Rule 22 of the Rules, wherein dealing with service of notice, it is provided that if orders are not pronounced in open 'Court', a notice be served on the person concerned. To emphasise his point that even in the Act, the Legislature was conscious of the exercise of powers by the authorities as a Court, he also refers to Section 18, wherein dealing with execution of orders of eviction passed, the Controller is to execute as if such order is an order of a civil Court for the purposes of execution and he is to have all the powers of a civil Court which is a significant indicia for holding that both Rent Controller and the Appellate Authority function only as a civil Court.

7. Mr. Mathrubutham would repel this claim by relying upon the decision of this Court in *S. Ganapathy v. N. Kumaraswami* (1975) 2 M.L.J. 171 : 88 L.W. 525, wherein it was held that Rent Controller and the Appellate Authority are only personae designatae. It is not necessary to re-state the decisions relied upon therein, but on the aspect of reliance placed on the decision of the Supreme Court in *Athani Municipality's case* (1969) 2 S.C.J. 749, it may be noted that the Supreme Court, while differing from the said decision, had not concluded that the powers exercised by Industrial Tribunal or a Labour Court, is akin to that of a civil Court. Dealing with similar provisions under the Andhra Pradesh Rent Control Act in *S. Mohd. Ali and Sons v. V. Madhava Rao*, it was held that the Rent Controller is not a Court, coming within the scope of Section 24 of the Civil Procedure Code and that it has no jurisdiction to entertain a petition for transfer of the proceedings from one Rent Controller to another Rent Controller. A similar view was taken in *N. Narayanamma v. P. Bhasker Reddi* (1972) 2 An.W.R. 189, holding that a District Judge has no jurisdiction to transfer the proceedings because, the Authorities created under the Act are personae designatae and

when the Act itself has made self-contained rules for transfer of proceedings by constituted authorities; there being an ab initio lack of jurisdiction in the District Court, it has no power to transfer a case from one Rent Controller to another.

8. Therefore, to conclude on this point, when the Rent Controller, and the Appellate Authority are constituted by a special notification and who incidentally happen to be Judges cannot be equated to exercising the powers of a civil Court. In making the notification, there is nothing in Section 2(3) or Section 23 of the Act to confer the powers of a Controller, only on judicial personnel. The intendment under the Act is to constitute 'any person' as a Controller by notification. Section 23(1) dealing with an Appellate Authority empowers the State Government to confer such powers 'on such officers and authorities as they may think fit', and therefore merely because as the matters stand at present, such powers have been notified to be exercised by certain Judges, it would not mean that the Act contemplates the notified functionaries to exercise the powers of a Court. Unlike the provision made in U.P. Act III of 1947 which came up for consideration in *Central Talkies Ltd., Kanpur v. Dtuarka Prasad*, or what was held in *Surindra Mohan v. Dharam Chand* A.I.R. 1971 J. & K. 76(F.B.), so far as Act XVIII of 1960 is concerned, the intrinsic evidence that could be made out, under Section 16 of the Telegraph Act as pointed out in *Kerala S.E. Board v. T.P. Kunthaliyuma*, is absent. Merely because such authorities record evidence or adopt a procedure more or less like a civil Court it cannot be held that all the necessary trappings of a civil Court are involved in such proceedings.

9. Two other aspects were relied upon by Mr. Mathrubutham to contend that the statutory authorities do not function like a civil Court by stating that Court-fees Act is not attracted and Civil Procedure Code is not invoked in toto in respect of the proceedings conducted under the Act, and therefore the decision evolved in *Surindra Mohan v. Dharam Chand* A.I.R. 1971 J. & K. 76(F.B.), or of what had been spelt out in *Kerala S.E. Board v. T.P. Kunthaliyuma*, are not applicable to this case. Undoubtedly, these are relevant factors to ascertain the nature of powers exercised and necessarily lead to the conclusion that they are not Courts. Being in full agreement with the view expressed in *S. Ganapathy v. N. Kumaraswami*, which does not call for any reconsideration in the light of what has been held in *Kerala S.E. Board v. T.P. Kunthaliyuma* both Rent Controller and the Appellate Authority under Act XVIII of 1960, are only *personae designatae*.

10. Under Section 24(1) (b) of the Civil Procedure Code, only in respect of matters which are pending in any Court subordinate to the High Court or District Court the powers of withdrawal can be exercised. As held above they are not Courts, and as to what relief would be available for aggrieved parties for having the matters transferred, Act XVIII 1960 itself has provided a specific remedy. Rule 17 of the Rules framed under the Act, empowers the Principal Judge City Civil Court, Madras, in respect of cases arising in the City of Madras and the District Courts in respect of other cases in the districts to transfer proceedings. When a specific provision is provided under a self-contained enactment enabling relief of transfer, the aggrieved party has to necessarily resort only to such a remedy, and Section 24, Civil Procedure Code, can have no application. Hence, in this case, when the petitioner herein has already moved for relief under Rule 24, he cannot file this petition under Section 24, Civil Procedure Code.

11. Mr. Sivamani would yet contend that there can be no inhibition in invoking the powers under Section 24, Civil Procedure Code, because, the two statutory authorities are only subordinates of the High Court and the powers can be concurrently exercised. In *K.V. Soorayya Chetty v. P. Dasaratha Naidu* (1966) 1 An.W.R. 384, it was held that such a concurrent exercise of powers exist; but it dealt with cases which would come within the scope of Section 24, Civil Procedure Code's and not a case wherein the subordinate authorities are *personae designatae*, and in spite of orders passed under the self-contained enactment refusing transfer, the concurrent powers of the High Court are invoked. As pointed out earlier, when the power of transfer is provided only to a limited extent under a self-contained enactment with limited remedies contemplated for aggrieved parties, they have to work out their rights only within the ambit of the enactment and be satisfied with whatever is contemplated for them in such situations by the Legislature.

12. Since the petition itself is not maintainable, there is no need to go into the allegations made in the petition. Mr. Sivamani would not be content without mentioning that in this case the transfer was asked for because the Rent Controller had already made certain remarks while disposing of the fair-rent proceedings. I do not think that any such expression of opinion would by itself warrant transfer of a subsequently filed case and this aspect was considered in *Krishnan Kanahya v. Vijayakumar*, wherein it was held that while invoking Section 24, Civil Procedure Code, this aspect cannot constitute a valid ground for transfer of the case.

13. In the light of what has been considered above, when specific provision is made under rules 14 and 17 of the Rules framed under the Act, which is a self-contained enactment, remedies will have to be worked out as provided therein, and when the notified authorities are only *personae designatae* and not Courts, Section 24, Civil Procedure Code, cannot at all be invoked. Hence these petitions are dismissed.