

Supreme Court of India

N.A.Munavar Hussain Sahib(Dead) ... vs E.R.Narayanan (Dead) & Ors on 11 July, 1995

Equivalent citations: 1995 AIR 2157, 1995 SCC (4) 746

Author: S Agrawal

Bench: Agrawal, S.C. (J)

PETITIONER:

N.A.MUNAVAR HUSSAIN SAHIB(DEAD) BY L.RS. & ANR.

Vs.

RESPONDENT:

E.R.NARAYANAN (DEAD) & ORS.

DATE OF JUDGMENT 11/07/1995

BENCH:

AGRAWAL, S.C. (J)

BENCH:

AGRAWAL, S.C. (J)

MANOHAR SUJATA V. (J)

CITATION:

1995 AIR 2157

1995 SCC (4) 746

JT 1995 (6) 177

1995 SCALE (4) 368

ACT:

HEADNOTE:

JUDGMENT:

THE 11TH DAY OF JULY, 1995 Present:

Hon'ble Mr. Justice S.C. Agrawal Hon'ble Mrs. Justice Sujata V.Manohar Mr.A.T.M.Sampath, Mr. V. Balaji, and Mr. G.Rajendran, Advs. for the Appellants.

Mr.R.Sundravardan, Sr. Adv. Mrs. Asha Nair, Mr.C. Balasubramaniam and Mr. K. Ram Kumar, Advs. with him for the Respondents.

Mr.P.N.Ramalingam, Adv. for the Respondent No. 3.

J U D G M E N T The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL
APPEAL NOS.10618-10619 OF 1983 N.A. Munavar HussainAppellants Shib
(Dead) by LR & Anr.

Versus E.R. Narayanan (Dead)Respondents & Ors.

J U D G M E N T S.C. Agrawal, J.:

These appeals from the Common Judgment of the Madras High Court dated June 17, 1983 in A.S. No. 529 of 1982 and S.A. No. 987 of 1983, raise the question whether the decree passed in a suit for ejectment filed by appellant No. 1 has become inexecutable and the said suit is liable to be dismissed by virtue of the provisions of section 4 (4) of the Madras City Tenants' Protection Act, 1921 (hereinafter referred to as the Act).

The appellants are the descendents of Abdul Kader Sahib. In 1917, Abdul Kader Sahib gave a vacant plot of land on West Masi Street in Madurai Town on lease to Ramaswami Konar. The said lease permitted construction to be raised on the plot. Ramaswami Konar built a theatre on the said plot. It was earlier known as 'Chandra Talkies' and was subsequently named as 'Shanti Theatre'. On February 23, 1935 a fresh lease was granted in favour of Ramaswami Konar by Abdul Kader Sahib for a period of 11 years. After the death of Ramaswami Konar, there was partition in the family and the leasehold rights over the vacant land and the superstructure put up thereon came to the share of his son, Narayanan, respondent No.1. On March 12, 1948, respondent No.1 sold the leasehold rights in the site as well as superstructure in favour of Bharatha Muthu Thevar, who was the manager of the joint family consisting of himself and his brother Veerabhadra Thevar with an agreement to repurchase one half of the leasehold rights in the site and the theatre. On November 28, 1953 Bharatha Muthu Thevar and his brother Veerabhadra Thevar reconveyed half share in the theatre and in the leasehold rights over the land to respondent No. 1. In 1954 appellant No.1 filed a suit (O.S.No.15 of 1954) in the Court of the Subordinate Judge of Madurai, against respondent No.1 (who was impleaded as Defendant No. 1), and Bharatha Muthu Thevar, Veerabhadra Thevar, impleaded as Defendants Nos. 2 and 3, and others including N.A.Ghulam Khalilluah Sahib, Defendant No.6, for recovery of possession of the Vacant site after removal of superstructure and for a mandatory injunction for removal of structure as well as for damages for use and occupation and for other reliefs. The said suit proceeded ex parte against Defendants Nos. 4 and 5. In the said suit a compromise was arrived at between appellant No. 1 and defendants Nos. 1, 2, 3 and 6 and in terms of the said compromise a decree was passed on January 10, 1955 whereunder defendants Nos. 1, 2, 3 and 5 agreed to deliver the possession of the suit properties after removing the superstructure on item No.1, to the plaintiff and defendant No. 6 on or before March 12, 1958 and further agreed that if defendant Nos. 1 to 3 and 5 fail to deliver possession as aforesaid the plaintiff and defendant No.6 would be at liberty to take possession of the suit properties in execution of the decree after March 12, 1958 and in case the plaintiff or defendant No.6 has to remove the superstructure, they shall be at liberty to remove them and realise costs of such removal from defendants Nos. 1, 2, 3 and 5.

The Act was enacted in 1922 with a view to give protection to certain classes of tenants. Originally it was confined in its application to the city of Madras, but by Tamil Nadu Act XIX of 1955, the Act was

amended and its protection was extended to tenants in municipal towns to which the provisions were made applicable by the State Government by notification under sub-section (2) of section

1. In exercise of the said powers, the Act was extended to Madurai on September 12, 1955.

After the passing of the compromise decree dated January 10, 1955 Veerbhadra Thevar, on December 19, 1956, transferred his 1/4th share in the leasehold rights and the superstructure in favour of S.S.Sundaram Chettiar, respondent No.2 herein.

Since the defendants failed to remove the superstructure and handover vacant possession as per the terms of the compromise decree, the appellant and N.A.Ghulam Khalilulla Sahib defendant No. 6 in the suit filed E.P. No. 90 of 1958 in the court of the Subordinate Judge, Madurai for execution of the said decree dated January 10, 1955 passed in O.S.No. 15 of 1954. In the said execution petition respondent No.1 filed application E.A. No.467/58, Bharatnamuthu Thevar filed E.A.No.486/58 and respondent No. 2 filed E.A.No.713/58 whereby the said applicants sought the benefit of the provisions of the Act and prayed that the market value of the site may be fixed and the same may be directed to be conveyed to them. It was also prayed that in any case the decree-holder was no longer entitled to demolish the building at his cost or of the applicants in spite of the decree and that the decree holder was bound to pay compensation for the building put up by the applicants. During the pendency of the said applications N.A. petitions Gulam Khalilullah Sahib died and appellant No. 2 was brought on record as his legal representative and Bharatha Muthu Thevar also died during the pendency of the said applications and respondent Nos. 4 to 6 were brought on record as his legal representatives. E.A. Nos.467, 486 and 713 of 1958 referred to above were disposed of by the executing court by a common order dated September 14, 1964. It was held that the applications were barred by limitation as the defendants-tenants did not apply within one month from the date the Act, as amended by Act XIX of 1955, was extended to the city of Madurai, but applied only in 1958 after the expiry of three years'time and therefore the said applications could not be allowed in respect of the said property under section 9 of the Act. The executing court, however, held that it is admitted that tenant had put costly structure on the property and that the decree-holder must pay reasonable value for the said superstructure. The executing court, therefore, directed that a fresh valuation may be made by the Commissioner to be appointed by the court. With these directions E.A.Nos. 467, 486, and 713 of 1958 were dismissed as barred by limitation. In accordance with the said direction contained in the order dated September 14, 1964 a Commissioner was appointed who assessed the value of the superstructure at Rs. 88, 940/-. On September 29, 1970 a joint memo was submitted by the appellants and respondent No.1, whereby a joint endorsement was made by appellants and respondent No.1 that the value of Rs. 88,940/- may be adopted and that six months' time may be granted for the payment of the amount to the decree-holders. On the strength of the said joint endorsement the Subordinate Judge granted six months time for depositing the sum of Rs. 88,940/-. The execution petition was proceeded ex-parte against the other judgment-debtors. The said amount of Rs. 88,940/- was not deposited by the appellants within the period of six months and an application (E.A.No.201/71) was submitted on behalf of the appellants for further extension of time for depositing the said amount. Respondent No. 1 filed a counter opposing the grant of time. Subsequently on July 31, 1972 a joint endorsement was submitted by parties and time for deposit was extended by three months from July 31, 1972. The appellants deposited the amount

of Rs. 88,940/- on September 29, 1972 within the period of three months prescribed by order dated July 31, 1972.

One Mangyakarsi Achi, respondent No. 7 herein, had instituted a suit (O.S.No.72/61) in the Sub. Judge court Madurai against respondent No. 2 for recovery of certain amount due to her from respondent No.2 on the basis of mortgage wherein final decree had been passed and even after the sale of the mortgaged property the decree was not fully satisfied. In the said suit respondent no. 2 had been appointed as Receiver of the Ashok Theatre the mortgaged property, and Respondent No. 2 failed to deposit in court the amounts collected by him as receiver. Respondent No.7 filed in application (I.A.171/72) under Order 40 Rule 4 CPC in the said suit (O.S. 72/61) in the court of Subordinate Judge, Ramanathapuram, for attachment of 1/4th share and the rights of respondent No.2 in Shanthi Theatre. On the said application an order was passed for attachment of 1/4th share of respondent No.2 in Shanthi Theatre. on August 21, 1972 and in pursuance of the said order attachment was effected on September 17, 1972. Since the said attachment order was passed ex-parte it was set aside on the application submitted by respondent No.2. On February 27, 1973 a fresh order was passed for attachment of 1/4th share of respondent No.2 in Shanthi Theatre and in pursuance of the said order the attachment was effected on March 25, 1973. The appellants filed a claim petition (I.A. No. 527 of 1973) against the said attachment on the ground that they had become owner of the superstructure in Shanthi Theatre on the date of attachment by reason of the deposit of Rs.88,940/- made by them into the court pursuant to the order dated July 31, 1972 in E.P.No.90 of 1958, in O.S.No.15 of 1954 and that respondent No.2 did not have any interest therein on the date of attachment. The said claim petition filed by the appellants was allowed and the order of attachment in respect of 1/4th share of respondent No.2 in Shanthi Theatre was set aside by order dated May 2, 1975, Thereupon respondent No.7 filed a suit (O.S.No.92 of 1976) against appellants and respondent No.3 for setting aside the said order dated May 2, 1975. The said suit of respondent No. 7 was decreed by the 1st Additional Subordinate Judge, Madurai by judgment dated September 7, 1976 on the ground that in view of section 4(4) of the Act only three months' time could be granted for depositing the sum of Rs.88,940/- towards cost of superstructure and the said amount had to be deposited on or before December 29, 1970 and since the appellants had failed to deposit the said amount within that date, section 4(4) of the Act came into play immediately and suit O.S.No.15/54 stood automatically dismissed and after December 29, 1970 there was no decree for possession in favour of the appellants and that they continue to be the owners of the vacant site alone and respondent No.2 and others continue to be owners of the superstructure and that respondent No.2 had undivided 1/4th share in the superstructure. The appeal (A.S.No. 292 of 1978) filed by the appellants against the said judgment and decree in O.S.No. 92 of 76 was dismissed by the District Judge Madurai by judgment and decree dated May 9, 1979. Second appeal No. 987 of 82 was filed by the appellants in the High Court against the said decree of the District Judge.

After O.S.No.92 of 1976 filed by respondent No. 7 was decreed by the trial court, respondent No. 1 filed a suit (O.S.No.671 of 1970 in the Court of Subordinate Judge of Madurai against the appellants as well as respondent Nos. 2 to 8 wherein Respondent No. 1 sought a declaration that he is entitled to half share in the superstructure including the leasehold rights over the site and also sought a permanent injunction restraining the appellants from interfering with the common possession and enjoyment of the superstructure by Respondents Nos. 1, 2 and 4 to 6. Respondents also sought other

reliefs against the other defendants in the said suit. In the said suit it was submitted that the decree in O.S. No. 15/54 was an invalid decree and payment of Rs. 88,940/- beyond the statutory time fixed under the Act was illegal and could not therefore confer any right on the appellants and that the respondent No.1 was still entitled to half share in the superstructure, machinery etc. as also in the leasehold right of the site. The said suit was decreed in favour of respondent No. 1 by the III Additional Sub-Judge, Madurai by Judgment dated November 16, 1981 and respondent No.1 was held entitled to half share in the leasehold right as well as the superstructure. The said judgment was based on the judgment of the trial court in O.S.No. 92 of 1976 filed by Respondent No. 7 which had been affirmed in A.S.292 of 1973 and the said judgment was held to operate as res judicate. A.S. No.529 of 82 was filed by the appellants in the High Court against the said judgment and decree of the III Additional Sub-Judge.

A.S. No. 529 of 1982 and S.A.No. 987 of 1983 were both disposed of by the High Court by the judgment under appeal. The High Court was of the view that the order dated September 29,1970 passed by the executing court in E.P.No.90 of 1958 was really an order passed by the executing court under Section 4(1) of the Act read with Section 10(2) and must strictly conform to the requirements of Section 4(1) and, therefore, the amount of Rs.88,940/- should have been deposited within three months from the date of passing of the order dated September 29, 1970 and since it was not deposited within the said period of three months, the suit (O.S.No. 15/54) stood dismissed by virtue of section 4(4) of the Act. The High Court has rejected the contentions urged on behalf of the appellants that the provisions of the Act were not applicable and the direction regarding deposit of Rs. 88,940/- was dehors the provisions of the Act. Feeling aggrieved by the said Judgment of the High Court the appellants have filed these appeals.

Thus the question that falls for consideration in these appeals is whether the order dated September 29, 1970 passed by the executing court in E.P.No. 90 of 1958, whereby six months time was given to the decree-holders to deposit the sum of Rs.88,940/-, was an order passed under section 4(1) of the Act read with Section 10(2) or was an order passed dehors the provisions of the Act. It would be convenient at this stage to set out the relevant provisions of the Act as they stood on September 29, 1970 :

"Section 3. Payment of Compensation on ejectment. 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, 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."

"Section 4(1). Disposal of suits for ejectment. In a suit for ejectment against a tenant in which the landlord succeeds, the court shall ascertain the amount of compensation, if any, payable under section 3 and the decree in the suit shall declare the amount so found due and direct that, on payment by the landlord into court,

within three months from the date of the decree, of the amount so found due, the tenant shall put the landlord into possession of the land with the building and trees thereon.

(2) Omitted.

(3) Omitted.

(4) If the amount found due is not paid into court within three months from the date of the decree under sub-section (1) or of the interim order under sub- section (2), or if no application is made under section 6, the suit or application, as the case may be, shall stand dismissed, and the landlord shall not be entitled to institute a fresh suit for ejectment, or present a fresh application for recovery of possession for a period of five years from the date of such dismissal."

"Section 9(1) (a). Application to Court for directnig the landlord to sell land.

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 Cause Courts Act 1882, taken by the landlord, may, within one month of the date of the Madras City tenants' Protection (Amendment) Act, 1955, coming into force or of the date with effect from which this Act is extended to the municipal town 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 the extent of land specified in the application.

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(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 fix the price of 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 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.

(2) (Omitted) (3) (Omitted)"

"Section 10(1). Sections 4, 5, 6, 8, 9 and 9-A shall apply to suits in ejectment and applications under section 41 of the Presidency Small Cause Courts Act 1882, which are pending or in which decrees for ejectment or order sunder section 43 of the

Presidency Small Cause Courts Act, 1882, have been passed, but have not been executed in the City of Madras City Tenants' Protection (Amendment) Act, 1955, and in any municipal town or village, before the date with effect from which this Act is extended to such town or village. (2) In suits in which decrees for ejectment have been passed, the amount of compensation due shall on the application of the tenant be ascertained in execution and a fresh decree passed in accordance with section 4. (3) (Omitted)."

From the aforesaid provisions it would appear that under Section 3, on ejectment, a tenant is entitled to be paid as compensation the value of any building which may have been erected by him or by his Predecessor in interest or by any person not in occupation at the time of ejectment who derived title from either of them and for which compensation has not already been paid. Section 4 makes provision for giving effect to the said right while passing the decree in the suit for ejectment. Section 9 enables a tenant against whom a suit for ejectment has been instituted to buy the whole or a part of the land on payment of the price determined by the court. Section 10 deals with a situation where the suit for ejectment was pending or where the decree for ejectment has already been passed, but has not been executed on the date when the provisions of the Act became applicable. By sub-section (1) of Section 10 the provisions of sections 4, 5, 7, 8, 9 and 9-A have been made applicable to such suits. Sub-section (2) of Section 10 enables the tenant to move an application for ascertainment of the amount of compensation and passing of a fresh decree in accordance with Section 4 in suits in which decrees for ejectment have been passed.

In the instant case we are concerned with the provisions of section 10 because on September 12, 1955 when the Act was extended to Madurai town the decree for ejectment had already been passed in Suit O.S.No.15 of 1954 and the said decree had not been executed. By virtue of sub-section (1) of section 10, sections 4, 5, 6, 8, 9 and 9-A became applicable to such proceedings. Section 3 was, however, not made applicable. As a result the tenants, could file an application under Section 9(1) (a) within one month from September 12, 1955, the date with effect from which the Act was extended to Madurai town, for an order directing the landlord to sell the whole or part of the extent of land specified in the application at the price to be fixed by the court. Under sub-section (2) of section 10 the tenants could submit an application for ascertainment of the amount of compensation due and in the event of such an application being filed the procedure laid down under section 4 was required to be followed and a fresh decree had to be passed under section 4 of the Act.

In *V.K.A. Ranganatha Konar v. The Tiruchirappalli Municipal Council*, by its Commissioner, & Anr. (1965) 2 SCR 645, during the pendency of the suit for eviction filed by the landlord, the Act was extended to the Municipal Town of Tiruchirappalli. The trial court valued the improvements made by the tenant and made a declaration under section 4(1) of the Act. On the basis of the said valuation the decree for ejectment was passed directing the defendants to put the plaintiff in possession of the suit properties on payment of the amount determined as compensation for the superstructure belonging to the first defendant. The decree did not in terms direct the landlord to pay the said amount within three months of its date. The said payment was not made by the landlord within three months from the date of the decree. After the expiry of period of three months from the date of decree, the tenant filed an application before the trial court submitting that since the landlord had

failed to deposit the amount of compensation within the period of three months from the date of the decree, the suit was liable to be dismissed under section 4(4) of the Act. On the said application the trial court passed an order dismissing the suit under section 4(4). The High Court reversed the said order on the view that since the original decree did not give a specific direction that the amount of compensation should be paid within three months, the provisions of section 4(4) could not be invoked until the decree was suitably amended. Reversing the said view of the High Court and restoring the order of the trial court, this Court has held :

"We are inclined to think that having regard to the mandatory terms used in s. 4(4) it would be illogical and unreasonable to suggest that a defective decree like the present enables the landlord to circumvent the provisions of s.4(4). The applicability of s.4(4) cannot be repelled merely on the ground that the decree passed under s. 4(1) does not specify the period of three months within which the amount found due has to be paid. In our opinion, the logical way to reconcile s. 4(1) and s.4(4) would be to treat the provision prescribed by s. 4(4) as mandatory and paramount and read the relevant portion of s. 4(1) accordingly. That is why even if the decree does not mention that the amount has to be paid within three months, the landlord's obligation to make the payment within three months is still enforceable under s. 4(4). Otherwise defective decrees would deprive the tenants of the benefit intended to be conferred on them by s.

4(4). "(p.652) The High Court has relied upon the said decision to hold that since the order dated September 29, 1970 was passed under section 4(1) of the Act, the court could only prescribe three months' time for depositing the amount of compensation in view of section 4(4) of the Act and fixing of six months time for such deposit in the said order was therefore, not in consonance with the statutory requirements of section 4 of the Act and the said order should be construed as having fixed three months' time for the said deposit and since the deposit was not made within three months, the said suit stood dismissed under section 4(4) of the Act on the date of expiry of the period of three months' from the date of passing of the order dated September 29, 1970.

Shri A.T.M.Sampath, the learned counsel for the appellants, has urged that the order dated September 29, 1970 was not an order passed under section 4 (1) of the Act but was an order passed dehors the provisions of the Act. Shri Sampath has pointed out that the said order dated September 29, 1970 is based on the earlier order dated September 14, 1964 whereby the executing court had dismissed all the three applications (E.A.Nos. 467, 486, and 713 of 1958) filed by Respondent No. 1 and Bharathamuthu Thevar and Respondent No. 2 as being barred by limitation but having regard to the fact that the tenants had put costly structures on the land the landlord decree-holders were directed to pay reasonable value for the said superstructure. According to Shri Sampath this direction in the order dated September 12, 1964 was not given by the court under any of the provisions of the Act but on equitable considerations and, therefore, the subsequent order dated September 29, 1970 was an order passed dehors the provisions of the Act. In support of the said submissions Shri Sampath has placed reliance on the decision of a learned judge of the Madras High Court in G. Muthuvel Pillai v. Hazarath Syed Sha Mian Sakkab Kadhiri Thakal. Thanjavur by its Trustee and Ors., 1976 MLJ 332, which has been affirmed by this Court in G.Muthuvelu Pillai (dead)

by Lrs. V. Hazarath Syed Shah Mian Sakkaf Sahib Khadiri Thaikal (dead) by Lrs. and Ors., 1993 Supp.(1) SCC 413. Shri Sampath has also urged that the order dated September 29, 1970 was passed on the basis of the joint endorsement by the appellants and respondent No. 1 and in view of the fact that on the basis of subsequent joint endorsement dated July 31, 1972 which was signed by appellants as well as respondent Nos. 1 and 2 the time for payment was extended by three months by order dated July 31, 1972, it is not open to the respondents to assail the validity of the said order on the basis of the provisions of section 4 of the Act.

Shri R. Sundaravardan, the learned Senior counsel appearing for respondent No.1, has, on the other hand, submitted that the High Court was right in holding that the order dated September 29, 1970 was passed under section 4(1) of the Act and in view of section 4(4) of the Act, the appellants were required to deposit the amount of Rs. 88,940/- compensation within three months from the date of the said order and since they failed to do so, the suit (O.S.No.15 of 1954) filed by the appellants stood dismissed on the expiry of the period of three months on December 29, 1970 by virtue of Section 4(4) of the Act. The learned counsel has contended that while an application under section 9 is required to be submitted within one month from the date of application of the Act, no period of limitation is prescribed for moving an application for determination of compensation under section 10(2) of the Act and that the applications (E.A.Nos. 467, 486 and 713 of 1958) filed by Respondent No.1 and Bharathamuthu Thevar and Respondent No. 2, insofar as they sought a direction regarding payment of compensation for the superstructure, could not be dismissed as being barred by limitation. the learned counsel has also urged that the fact that the order dated September 29, 1970 was passed on the basis of a joint endorsement submitted by the appellants and respondent No.1 cannot preclude respondent No.1 from assailing the correctness of said order on the ground that it was passed in contravention of the provisions of section 4 of the Act. The learned counsel has placed reliance on the provisions of Section 12 of the Act which provides that nothing in any contract made by a tenant shall take away or limit his rights under the Act.

In the order dated September 14, 1964 whereby E.A.Nos, 467, 486 and 713 of 1958 were dismissed, the Subordinate Judge, after referring to the decisions of the Madras High Court, has observed:

"Bearing these principles in mind, I have to hold that in as much as the tenants did not apply within one month from the date of Madras City Tenants Protection Amended Act XIX of 1955 extended to the City of Madurai, but only applied in 1958 after the expiry of 3 years time. The applications E.A.Nos. 467, 486 and 713 of 1958 are out of time."

The Subordinate Judge rejected the contention urged on behalf of the tenants and the other respondents that the period of one month should be counted from the date of service of the notice in the execution petition and has held:

"I hold all E.As. are clearly out of 1958 cannot be allowed in respect of the claim to sell the property under section 9 of the Madras City Tenants Protection Act, and these applications have to be dismissed in toto as regards the prayer, in them, to fix their market value.

E.A.Nos. 467, 486 and 713 of 1958 are hereby dismissed as barred by limitation."

Even though the applications were dismissed as barred by limitation the Subordinate Judge has held that "the decree holder must pay reasonable value of the superstructure" after observing:

"Further it is admitted that possession had passed to the tenant and that the tenant has put up costly structures on the property. Therefore, I do not see any ground to refuse the value of improvements."

The Subordinate Judge permitted the applicants (Defendants Nos. 1, 2 and 7) to take out a fresh commission for assessing the value of the buildings through a competent Commissioner. In pursuance of the said direction the Commissioner was appointed who submitted a report assessing the value of the superstructure at Rs.88,940/-. The said report was accepted by the Subordinate Judge on the basis of a joint endorsement made by the appellants and respondent No. 1 and by order dated September 29, 1990 six months time was given to the appellants to deposit the said amount of Rs. 88,940/-.

These directions regarding payment of reasonable value of the superstructure and the assessment of the value through a Commissioner cannot be regarded as having been given under the provisions of the Act since the applications submitted by the defendants were dismissed as barred by limitation. These directions here to be regarded as having been given on equitable considerations.

In G.Muthuvelu Pillai (supra) a compromise decree had been passed in a suit for vacant possession of leasehold property on June 28, 1963 whereunder the superstructure put up on the land was to be purchased by the plaintiff for Rs. 6,000/-. The provisions of the Act were not applicable on the date of the passing of the decree and were extended to Thanjavur by notification dated November 7, 1964. The application submitted by the defendant under Section 9 of the Act was dismissed as it was filed beyond the period of limitation one month. The High Court, in second appeal, increased the sale consideration fixed by the trial court for the superstructure from Rs. 6000/- to Rs. 8000/-. The plaintiff sought delivery of possession in proceedings for execution of the decree. Relying upon the provisions of section 3 of the Amending Act 16, 1964, which was made applicable to Thanjavur on November 7, 1964 and which provided for abatement of certain pending proceedings it was urged on behalf of the defendant that the proceedings had abated. Rejecting the said contention it was held by the High Court (S.Mohan J., as the learned Judge then was) that it was a case of simple purchase of superstructure dehors the Act and it could not be contended that any rights still remained surviving which abated under section 3 of the Amending Act 16 of 1964. The said judgment of the High Court has been affirmed in appeal by this Court. [See : G.Muthuvelu Pillai (supra)]. This case indicates that an order regarding payment of price for the superstructure could be passed dehors the Act.

We are unable to construe the order dated September 14, 1964 and the subsequent order dated September 29, 1970 as orders passed under Section 4 (1) of the Act. An order under Section 4 could be passed only on an application under section 10(2) of the Act. The only applications that were submitted by the respondent-tenants were E.A.Nos. 467, 486 and 713 of 1958. The said applications were composite applications under sections 9 and 10(2) of the Act. They were all dismissed as barred

by limitation. It is true that no period of limitation has been prescribed for an application under Section 10(2) of the Act, but the executing court by order dated September 14, 1964 dismissed the applications in toto as barred by limitation. The said order has become final. It is not open to the respondents to assail the correctness of the said order dated September 14, 1970 in these proceedings. The orders dated September 14, 1964 and September 29, 1970 regarding payment of price of the superstructure by the appellants to the respondents cannot, therefore, be held to be orders passed under section 4(1) of the Act. The said orders can only be treated to be orders passed dehors the provisions of the Act.

The High Court has laid emphasis on the provisions contained in section 3 of the Act and has observed that the said provisions cast an obligation on the court to determine the amount of compensation under section 4 in respect of superstructure. The High Court has, however, failed to note that under section 10(1) the provisions of Section 3 have not been made applicable to a suit that was pending or in which decree for ejectment had been passed, but had not been executed. In respect of suits in which decrees for ejectment have been passed provision is made in Section 10(2) for ascertainment in execution of the amount of compensation due on the application of the tenant and for passing a fresh decree in accordance with section 4. This means that the procedure laid down under section 4 has to be followed only when an application is filed by the tenant under Section 10(2) of the Act and in the absence of such an application the provisions of section 4 do not come into play. Since the only application that was submitted by the tenant- respondents was dismissed as barred by limitation no direction regarding fixation of price could be made by the court under Section 4(1) of the Act and the direction regarding payment of price by the decree-holders and determination of the value cannot be regarded as a direction given under section 4(1) of the Act. Section 4(4) is, therefore, not attracted and the suit (O.S.No. 15 of 1954) could not be held to have been dismissed by virtue of the provisions contained in Section 4(4) of the Act on account of non-payment of the price of the of the superstructure by the appellants within a period of three months from the date of the order dated September 29, 1970.

In that view of the matter we do not consider it necessary to go into the other contention urged by Shri Sampath that the deposit of the sum of Rs. 88,940/- by the appellants as per the directions given in the order dated September 29, 1970, was validly made and that the respondents were estopped from assailing the validity of the said deposit.

In the result the appeals are allowed, the Judgment dated June 17, 1983 passed by the High Court of Madras in S.A.No. 987 of 1983 and A.S. No. 529 of 1982, the judgment dated September 7, 1977 passed by 1st Addl. Subordinate Judge in O.S.No.92/78, judgment dated May 9, 1979 passed by the District Judge, Madurai in A.S.No.292/78 as well as judgment dated November 16, 1981 passed by the Subordinate Judge, Madurai in O.S.No.671/78 are set aside and O.S.No.92/76 and O.S.No.671/78 filed by respondent No.1 are dismissed. The appellants will be entitled to their costs.