
(1918) 01 MAD CK 0003
In the Madras High Court

A.K.T.K.M. Sankaran Nambudripad

APPELLANT

Vs

S.N. Ramasami Iyer and Another

RESPONDENT

Date of Decision : 29-01-1918

Acts Referred:

Citation : 47 Ind. Cas. 301

Hon'ble Judges : William Ayling, J; Seshagiri Aiyar, J

Bench : Division Bench

Judgement

William Ayling, J.—The main point for our disposal in this appeal is the general question raised in the single issue framed--Whether the

provisions of Section 42 of Madras Act II of 1864 apply to a sale u/s 7(1)(c) of the Land Improvement Loans Act (XIX of 1883): in other words,

whether such a sale is free of prior encumbrances.

2. The Subordinate Judge has decided that it is and in my opinion he is right. The point is not covered by authority, as the cases quoted on

appellant's side, Ramachandra v. Pitchaikanni 2 Ind. Dec. 886 and Qhinnasarhi Mudali v. Tirumalai Pillai 25 M. 572, all relate to sales under

Clause (a) [and not Clause (c)] of Section 7(1). A comparison of the various Clauses (a), (b), (c) and (d) shows that the framers of the Land

Improvement Loans Act considered that there was some substantial difference between a sale for arrears of land revenue of the land on which the

arrears accrued and, a sale for the same purpose of other lands, whether belonging to the defaulter or some one else. The same distinction was

present to the minds of the learned Judges in the earliest of the above cases, Ramachandra v. Pitchaikanni 2 Ind. Dec. 886: after referring to

various Sections of the Revenue Recovery Act they say, "the intention is clear

that the purchase is free of prior encumbrances only when the arrear is of public revenue of which the land is the first security by statutory declaration", and again, arrear of abkari revenue is not due upon any specific land owned by the abkari renter." This in fact seems to be the main ground on which their decision is based. The judgment in *Chinnasami Mudali v. Tirumalai Pillai* 25 M.K 572 also draws the same distinction. The above decisions are, therefore, of no help to appellant in the present case, and indeed indirectly tend to a conclusion adverse to him.

3. The learned Vakil for appellant has argued that the words "in all or any of the following modes" and "as if" contained in Section 7 have reference solely to procedure and were not intended by the Legislature to import the operation of Section 42 of the Revenue Recovery Act. The weak point in this argument is that he is unable to indicate (and we are unable to detect) any difference between the procedure laid down for bringing to sale the lands on which arrears of land revenue have accrued and other lands liable to sale for the same arrears. On this view, the inclusion of a special Clause (c) is unexplained.

4. In this connection, reference has been made to a decision of this Court in *Secretary of State v. Pisipati Sankarayya* 8 Ind. Cas. 414 : (1910) M.W.N. 722, in which Miller and Munro, JJ., held that all sales of land for arrears of land revenue were free of encumbrances whether the lands sold were those on which the arrears accrued or other lands belonging to the defaulter. It may be argued that on this view of the law the enactment of Clause (c) in addition to Clause (a) is in any case unnecessary. I think the explanation lies in the fact that the Land Improvement Loans Act is an Act of the Government of India and that there is no reason to suppose that it was framed with sole regard to the provisions of the Madras Revenue Recovery Act. Other Revenue Recovery Acts in force in 1883 recognised a distinction between the conditions of sale of land on which arrears had accrued and other lands belonging to the defaulter: vide Sections 11 and 12 of Bengal Act VII of 1853, Sections 94(f) and (g), and 108 of the Central Provinces Land Revenue Act XVIII of 1881 and Sections 133 and 135 of Act XVII of 1876, Oudh Land Revenue Act Even assuming, therefore, that the framers of the Land Improvement Loans Act shared the view of the Madras Act II of 1864 taken by the learned Judges in

Secretary of State v. Pisipati Sankarayya (1910) M.W.N. 722, this is not inconsistent with their having deliberately distinguished the cases, having

in mind the provisions of the Acts in force in other parts of India. Even in this Presidency so far as I am aware, the Secretary of State v. Pisipati

Sankarayya 8 Ind. Cas. 414 : (1910) M.W.N. 722 was the first case in which the broader view of the applicability of Section 42 was expressed;

and, with all respect to the learned Judges in that case, I am inclined to think the learned Judges who decided Ramachandra v. Pitchaikanni 2 Ind.

Dec. 886 were inclined to take the narrower view. There is no reason to suppose that the framers of Section 7 of the Land Improvement Loans

Act acted under the impression that there was no difference in this respect.

5. I am inclined to think that while the words "in all or any of the following modes," if they stood alone, might be indicative only of procedure, some

wider meaning should be attached to the words "as if" in Clause (c), when contrasted with the words "according to the procedure, etc.," in Clause

(d). The use of the latter words is significant and shows at any rate that the framers of, the Act had other words in their minds, which might have

been more suitably employed to express the meaning contended for by appellant's Vakil.

6. There is, however, another argument, to my mind conclusive on the point, furnished by the proviso to the Section which runs: Provided that no

proceeding in respect of any land under Clause (c) shall affect any interest in that land which existed before the date of the order granting the loan,

other than the interest of the borrower, and of mortgagees of, or persons having charges on, that interest, and, where the loan is granted u/s 4 with

the consent of another person, the interest of that person, and of mortgagees of, or persons having charges on, that interest.

7. This clearly implies that the interests of prior mortgagees are affected by a sale under Clause (c) and is in fact incapable of any other meaning.

Mr. C.V. Ananthakrishna Aiyar's only argument in this connection is that the words of a proviso cannot be used to extend the operation of the

Section to which it is attached. This is no doubt true, and is clearly established by the judgment of the Privy Council in the case on which he mainly

relied, West Derby Union v. Metropolitan Life Assurance Society (1897) A.C. 617 : 77 L.T. 884. But where there is doubt as to the true meaning

of the substantive part of a section, it is surely legitimate to look to the words of a proviso to it in order to determine which interpretation is correct.

This is recognised by Lord Herschell in his judgment in the very case referred to. It cannot be said that the words of the main part of the Section

are so clearly in appellant's favour as not to be at any rate ambiguous; and here we have a proviso which is a perfectly compatible with one

interpretation and clearly incompatible with another. It must also be noticed that one main objection of their Lordships to reference to provisos is

inapplicable to the present case: viz., that provisos are frequently inserted simply to allay the apprehensions of persons against whom the Act was

never intended to apply. This cannot be said of the exception against mortgagees which is contained in the proviso itself. There is nothing, as far as,

I can see, in the judgment of their Lordships in that case to preclude reference to the proviso for the interpretation of the Section with which we are

dealing: and it seems to me to be conclusive against appellant.

8. I must, therefore, hold that a sale of land u/s 7(1)(c) is free of encumbrances.

9. Two other objections raised on behalf of appellant may be briefly noticed. It is pointed out that Rs. 2,500 of the first instalment advanced was

devoted to discharging a loan privately taken for the purpose of paying for an oil engine, the installation of which on the land was part of the

improvements for which the loan was granted. Appellant contends that to this extent the loan from Government cannot be said to have been taken

for the purpose of making an improvement within the meaning of Section 4 of the Act. No authority is quoted and I am unable to accept such a

contention. A considerable time usually elapses between the application for a loan under the Act, and its disbursement to the borrower: and in the

present case the borrower being anxious to set about the work arranged to purchase the engine on the hire purchase system, and apparently took

a temporary loan from some private persons to enable him to discharge the earlier instalments. There is nothing in all this to affect the essential

object for which the loan was taken from Government or the borrower's liability under the Act.

10. The second objection is that, because the first instalment of the loan was not utilised within the period allowed by the Government rule, the

disbursement of the second instalment cannot be treated as the disbursement of a

loan under the Act, and to the extent of that instalment no priority can be claimed for it over plaintiff's mortgage. This contention is also baseless: it is not denied that the first, instalment had been utilised to the satisfaction of the Government officers on the specified improvements prior to the disbursement of the second instalment: and I fail to see how the action of Government in relaxing the strict operation of the rule regarding the time limit in favour of the borrower can prejudicially affect Government's right in this connection.

11. I would dismiss the appeal with costs of 2nd respondent.

Seshagiri Aiyar, J.

12. Although I agree with the conclusion at which my learned brother has arrived, having regard to the fact that the point argued is practically one of first impression and to the important issues involved in its decision, I have ventured to add a few words of my own.

13. The facts have been stated by my learned colleague and it is unnecessary to repeat them.

14. The main point for consideration is, whether a sale for the loan advanced by the Government in respect of agricultural improvement of a property avoids previous existing encumbrances upon that property. I do not agree with Mr. C.V. Ananthakrishna Aiyar that unless the loan is

advanced for making future improvements, the provisions of the Act have no application. Where in anticipation of a loan from Government work

which satisfied the definition of the term "improvement" is started, in my opinion, the loan must be taken to have been granted for the purpose of

making the improvement. The test is not whether the improvement was subsequently made but whether the money was applied for the construction

of agricultural improvements upon the property. Nor do I think that the fact that time was extended for completing the work in regard to which the

first instalment of payment was made, in any way affects the validity of the subsequent advances. The provision in the rules for the completion of

the work within the time stipulated is minatory in its nature, and it is as much open to the Government to extend the time for performance as it is

open to any private party to do in respect of contract fixing a time for performance. The rules do not bind the Government to refuse the loan if the

time stipulated has been exceeded.

15. On the main question, I have been greatly influenced by the contention of the learned Government Pleader on the inutility of Clause (a) of Act

XIX of 1883 if Clause (c) of that Section is intended to have the same result as Clause (a). I am prepared to agree with the learned Vakil for the~

appellant that the words ""as if they were arrears of land revenue"" would prima facie only attract the procedure prescribed in the Revenue Recovery

Act and not the substantial declaration contained in Sections 2 and 5 of that Act. The decisions of this Court have been uniform on that question.

See Ramachandra v. Pitchaikanni 2 Ind. Dec. 886, Ibrahim Khan Sahib v. Rangasami Naicken 23 M. 420, Kadar Mohideen Marakkayar v.

Muthukrishna Ayyar 12 M.L.J. 368 and Muthusamier v. Sree Sree Methanithi Swamiyar Avergal 19 Ind. Cas. 694. But in Clause (c) of Section 7

we have, in addition to the words ""as if they were arrears of land revenue,"" a preceding and a subsequent Clause which gives a different

complexion to the policy of the Act. The first four words out of the land and the last five words ""in respect of that land"" make it clear that the loan

granted is to be regarded as a first charge upon the pro-party. In Ramachandra v. Pitchaikanni 2 Ind. Dec. 886 which was under the Abkari Act,

two eminent Judges of this Court, while holding that the words ""in like manner as for the recovery of arrears of land revenue"" only denoted the

procedure to be adopted, Bay, ""Arrear of Abkari revenue is not due upon any specific land owned by the Abkari renter,"" That, to my mind, is the

keynote to the construction of similar provisions in other Acts. In the case of Abkari rent, in the case of Income Tax, in the case of cesses under

the Local Boards Act, the amount payable to the Government is not due in respect of any specified land, whereas the essence of the stipulation

under Act XIX of 1883 is that the loan is payable out of and in respect of the land for improving which the loan is granted. In my opinion, the

language of Section 7, Clause (c), amounts to a declaration that the land is charged with the payment of the revenue and when in addition to that

declaration the Legislature refers back to Act, II of 18d4, I am inclined to think that the provisions of Sections 2, 5 and 42 of that Act are intended

to be read with Clause (c) of Section 7 of Act XIX of 1883. Whatever doubt there may exist on this question is removed by the proviso, which in

distinct terms says that the interest in the land which is available to the Government is restricted to that of the borrower and to that of the

mortgagee.

16. Mr. C.V. Ananthakrishna Aiyar addressed to us an elaborate argument upon the inadvisability of utilising provisos to supplement the operative

portion of a section. I adhere to what I said on this question in my judgment in *Annie Besant v. Emperor* 37 Ind. Cas. 607 : (1916) 2 M.W.N.497

: 4 L.W. 625 It is a well-known canon of construction that where the language of a Section is clear and unambiguous, the proviso should not be

construed as adding to any right or disability created by the section; but where there is room for doubt regarding the construction of the section, it

has always been the practice to invoke the aid of the proviso to help in the proper interpretation of the section. The observations of Lord Watson

in *Wed Derby Union v. Metropolitan Life Assurance Society* (1897) A.C. 617, to which the learned Government Pleader drew our attention,

support this principle and there is nothing in the judgment of the other noble Lords to throw doubt on the correctness of the doubt of Lord Watson.

In my opinion, the proviso is strictly and rightly in place in this particular instance. By the operative portion of Clause (c) the Legislature provided

that out of the whole land the loan shall be realized. The proviso releases rights other than those of the borrower and of the mortgagee, e.g., the

rights of an occupancy tenant. Therefore, the proviso is aptly in place and has the further effect of elucidating the meaning of the operative clause.

17. There is only one other observation that need be made, and that is this; Section 7 provides for cumulative remedies to the Government to

proceed against the borrower personally, they may proceed to sell the land: lastly, they may also proceed to sell the land given as collateral

security. Now, under Clause (a) when the Legislature provided that the borrower can be proceeded against personally it would follow as a matter

of course that his property can be attached and sold. It seems to me that even where properties other than those upon which revenue is due are

sold under Act II of 1864, all pre-existing encumbrances on such properties are wiped off. During the course of the argument I felt some little

doubt as to whether the decision of Justices Miller and Munro in *Secretary of Sate v. Pisipati Sankarayya* 8 Ind. Cas. 414 : (1910) M.W.N. 722

was right. But, on closely examining the Sections of the Revenue Recovery Act, 1 feel that the effect of Section 42 is not only to discharge pre-

existing encumbrances upon the property on which the arrear is due, but also pre-existing encumbrances" upon every property which is brought to sale for arrears of revenue due from the defaulter. Section 32, to which Mr. C.V. Ananthakrishna Aiyar drew our attention, does not save the encumbrances as was contended. Therefore if the Government avail themselves of the remedy provided by Clause (a) and if the words as is they were arrears of land revenue were to be construed as only indicating the procedure to be adopted, then it would follow that the previous existing encumbrances would subsist and that the Government would only be entitled to the surplus sale proceeds, if any, after satisfying such encumbrances. If Clause (c) is also to be similarly interpreted, the Legislature must be deemed to have been guilty of redundancy. According to Mr. Ananthakrishna Aiyar, under Clause (c) also, if a sale is effected for the loan the encumbrances would still subsist. I do not think Courts will be justified in imputing to the Legislature the enacting of an unnecessary provision of law where they can give a consistent meaning to it otherwise. It is dear, whereas under Clause (a) the ordinary remedy is given, under Clause (c) the remedy of avoiding existing encumbrances is provided by the Legislature. At first sight it looks as if the Legislature was not conscious that under the Madras Revenue Recovery Act the sales of property other than those upon which arrears are due would not avoid the existing encumbrances. Very likely, the Imperial Government had in mind the provisions of Bengal Act VII of 1868, which, by Section 11 enables the Collector to sell only the tenure on which the rent is due and by Section 12 to exclude previous encumbrances only in respect of that particular tenure. The Madras Legislature has given a more drastic remedy for arrears of revenue than is given in Bengal, However that may be, there can be no doubt that the effect of Section 7, Clause (c), is to make a declaration on behalf of the Government that it has a first charge upon the property for the loan advanced in respect of that property just as u/s 2 of the Revenue Recovery Act the Government has a first charge for arrears of revenue. In this view, the decision of the Subordinate Judge is right, and I agree that the appeal should be dismissed with costs of the 2nd respondent.