

(1959) 10 MAD CK 0004
In the Madras High Court

B. Hariharamuthu Pillai

APPELLANT

Vs

Rani Subbulakshmi Nachiar, Hereditary Trustee of Kattalais of
Sri Thirukoshtiappar, etc., Temples and Others

RESPONDENT

Date of Decision : 01-10-1959

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(2)

Citation : (1960) ILR (Mad) 315 : (1960) 73 LW 44 : (1960) 1 MLJ 232

Hon'ble Judges : Balakrishna Ayyar, J; Balakrishna Aiyar, J

Bench : Division Bench

Judgement

Balakrishna Ayyar, J.—Rani Subbalakshmi Nachiar, claiming to be the hereditary trustee of certain kattalais attached to some temples in

what was formerly the Zamindari of Urkad, filed several suits in the Court of the District Muhsiff of Ambasamudram, to recover what she claimed

were arrears of rent from the defendants. According to her, the kattalais which she represented are entitled to full rights in the suit lands, that is to

say, both to the melvaram and to the kudivaram. The defendants, in their turn, pleaded that they are entitled to permanent rights of occupancy in

the lands. The following questions, therefore, arose for the determination.

(1) Whether the plaint schedule lands and other lands form a part of the estate of the Zamindari of Urkad which has been notified and taken over

by Government under the Abolition Act?

(2) Whether they are not minor inam lands?

(3) Whether the defendants had acquired permanent occupancy rights in the suit lands?

(4) Whether the lands have all along been treated as ryoti lands?

2. Issues raising these points were framed in the suits. The defendants filed Interlocutory Applications in the Court of the District Munsif of

Ambasamudram praying that since these questions had been raised the suits should be transferred to the Estates Abolition Tribunal, Madurai, u/s

11(1) of Madras Act XXX of 1956. The District Munsiff dismissed the petitions. The petitioners thereupon came to this Court in revision.

3. The learned Chief Justice, who heard the revision petitions, was inclined to allow them. But then, after he had dictated the order he proposed to

make it was brought to his notice that a different view of the matter had been taken by Ramachandra Iyer, J., in C.R.P. No. 168 of 1958 and by

Basheer Ahmed Sayeed, J., in C.R.P. No. 1657 of 1957. Having regard to this difference of opinion, and, in view of the importance of the

question raised, the matter has been posted before a Division Bench.

4. It is necessary to add that the State of Madras filed a petition to be brought on record, in view of the fact that the question raised is one of

considerable importance and likely to affect a number of other cases. That petition was allowed and we have had the benefit of the arguments of

the learned Advocate-General on behalf of the Government.

5. The contentions raised before us call for an analysis of the general scheme and scope of Madras Act XXX of 1956. That Act was intended to

make special provision for the determination of two questions.

(1) Whether an area is or is not an estate or part of an estate as defined in Section 3(2) of the Estates Land Act.

(2) Whether an area is or is not an inam estate as defined in Section 2(7) of the Abolition Act. Section 3(1) confers a right on any persons

interested in the matter to make an application for the determination of either of these questions. The application has to be made to the Tribunal

constituted under the Act. Under Sub-section (2) of Section 3 the application has to be filed within three months of the occurrence of one of the

following events:

(1) the date on which Act XXX of 1956 came into force;

(2) the date of the publication of an order u/s 3, Sub-section (2) of the Rent Reduction Act; or

(3) the date of the notification u/s 1, Sub-section (4) of the Abolition Act. Section 4 gives the State Government one year's time to appeal from a

decision that may have been given by any Court or Tribunal or a Settlement Officer. If the decision has been given by the Settlement Officer, the appeal would lie to the Tribunal. If the decision has been given by a Court or Tribunal constituted under the Abolition Act then the appeal would lie to the Special Appellate Tribunal, which would be a Bench of this Court constituted u/s 7 of the Act. Section 6 prescribes the procedure to be followed by the Tribunal. Section 7 provides for appeals to the Special Appellate Tribunal. Section 8 raises a presumption on the question, whether any inam village or a separated part of an inam village was or was not an estate within the meaning of the Estates Land Act before it was amended in 1936. Section 10 specifically enacts that except as otherwise expressly provided for in the Act, no civil or revenue Court and no Tribunal constituted under any other law, shall have jurisdiction to decide whether any non-ryotwari area is or is not an estate or part of an estate or is or is not an inam estate. Section 11 provides that all suits, appeals or other proceedings except those pending in the High Court at the commencement of the Act in which any question in issue is whether a particular area is or was an estate, or whether any particular area is or was an inam estate, shall stand transferred to the appropriate Tribunal constituted under this Act for the determination of that question. Section 12 contains certain ancillary provisions to deal with matters arising when the High Court remands a suit or proceeding. The other provisions of the Act are not material here.

6. It will be noticed that the scheme of the Act is to vest in the Tribunal constituted u/s 5, subject to an appeal to the Special Appellate Tribunal constituted u/s 7, exclusive jurisdiction to decide the two questions set out before, viz., whether any non-ryotwari area is or was an estate or not or whether any area is or was an inam estate or not. It will be noticed that Section 4 gives the Government a right of appeal within one year from the date on which Act XXX of 1956 came into force, however long before that Act, the orders in question may have been passed. In the case of private individuals the period of limitation is shorter. As the Act stands appeals from questions which have been decided, questions which are pending and questions which may arise in future have all to go to the Tribunal;

Reading the Act as a whole it would therefore appear that the questions whether the suit properties formed part of the zamindari of Urkad, or whether they are not minor inam lands, would have to be decided by the Tribunal set up u/s 5 and by that Tribunal alone.

7. In *A. Bhaskaran and Another Vs. Sellappa Goundan and Others*, , Ramachandra Iyer, J., took a different view-That was a case in which the District Munsif of Sankari, on an application made in that behalf, transferred the records in O.S. No. 67 of 1955 on his file to that of the Tribunal, Vellore, u/s 11 of Madras Act XXX of 1956. The plaintiffs, objected to the transfer and came to this Court in revision. Ramachandra Iyer, J., set aside the order of the lower Court and directed it to restore the suit to its file and dispose of it according to law. One reason which the learned Judge gave for taking the view he did was this:

There is no provision either in Act XXX of 1956 or in the Abolition or Rent Reduction Acts, for deciding suits by the Tribunals appointed under the Act. Nor is there any provision for re-transfer of the suits by the Tribunal to the Civil Court after the determination of the issue to enable the Civil Court to decide the rest of the suit.

The learned Judge was undoubtedly right, when he said that there is no provision in any of the three Acts he mentioned that would enable the Tribunal to dispose of the suit. It may also be correct to say that there is no express provision in Section 11 for enabling suits to be re-transferred to the file of the Civil Courts from that of the Tribunals. But, from that the conclusion reached by the learned Judge does not, it seems to us, necessarily follow. Sub-section (1) of Section 11 provides that all suits or proceedings in which the two questions which we have mentioned are raised shall stand transferred to the appropriate Tribunal constituted under this Act for the determination of that question.

8. The words italicised would make it plain that the transfer of the suits to the Tribunal is only for a very limited purpose, viz., the determination of the question whether any particular area is or was an estate, or whether it is or was an inam estate. The jurisdiction of the Tribunal is confined to the determination of these questions alone. It is given no jurisdiction to decide any other issue raised in the suit. Of course the Legislature could

have made the matter clear by adding words to the effect that after a Tribunal has disposed of the question the suits shall stand re-transferred to the appropriate civil Court. But though no words expressly effecting a re-transfer have been employed that seems to be the necessary consequence of limiting the jurisdiction of the Tribunal to the determination of the specified and particular questions.

9. Another reason which weighed with the learned Judge was what may be called the history of the matter. The Legislature first of all enacted the Rent Reduction Act. Then it went on to pass the Estates Abolition Act of 1948. When these Acts had to be implemented, questions frequently arose as to whether any particular area was or was not an estate, or was or was not an inam estate. The Legislature considered it necessary to set up a Tribunal for the speedy and effective adjudication of the questions. It is for that purpose that Act XXX of 1956 was enacted. Therefore it is only in relation to those Acts that we can properly suppose that the Legislature intended to confer exclusive jurisdiction in the Tribunals set up under the Act. It cannot therefore be said that when such questions arise in connection with other proceedings the Legislature intended to oust the jurisdiction of the ordinary Courts.

10. Now, it may be that it was the desire more speedily to implement the provisions of the Rent Reduction Act and the Abolition Act that persuaded the Legislature to enact Madras Act XXX of 1956. Nevertheless the fact remains that the Legislature used words wide enough to cover every occasion on which such questions-might arise for determination, and, not merely such occasions as might arise in the course of the implementation of the two Acts. It will be noted that express words are used to oust the jurisdiction of every Court other than the Tribunals constituted u/s 5 or the Special Appellate Tribunal constituted u/s 7, when these two questions arise for determination. Section 10 specifically provides that no civil or revenue Court and no Tribunal constituted under any other law shall have jurisdiction to decide the questions. Section 11 provides that all proceedings in which this question arose except those pending in the High Court shall be transferred to the appropriate Tribunal for the determination of the questions. The words are so comprehensive that it would not be right to say that the jurisdiction of the Tribunal would

arise only in those cases where efforts are made to implement the provisions either of the Rent Reduction Act or of the Abolition Act.

11. Basheer Ahmed Sayeed, J., in *Muthiah v. State of Madras* (1959) 72 L.W. 249 did not give any other reason for taking the view he did.

12. For the reasons given we overrule the decision of Ramachandra Iyer, J. and Basheer Ahmed Sayeed, J. and, allow these Revision Petitions.

13. The suits will stand transferred to the Estates Abolition Tribunal, at Madurai, with jurisdiction over Tirunelveli District for the determination of

the questions already indicated. After the Tribunal has given its finding on those issues, the suits will go back to the District Munsif,

Ambasamudram, for their being disposed of in accordance with law after determining, if necessary, the other issues.

14. There will be no order as to costs.