

**(1937) 12 MAD CK 0019**  
**In the Madras High Court**

|                                                         |            |
|---------------------------------------------------------|------------|
| Bhamidipati Satyanarayana, Receiver, Chinchinada Estate | APPELLANT  |
| Vs                                                      |            |
| Alluri Krishnamraju                                     | RESPONDENT |

---

**Date of Decision :** 03-12-1937

**Acts Referred:**

Madras Estates Land Act, 1908 — Section 42

**Citation :** AIR 1938 Mad 459 : (1938) ILR (Mad) 630 : (1938) 47 LW 179 :  
(1938) 1 MLJ 204

**Hon'ble Judges :** Venkatasubba Rao, J

**Bench :** Division Bench

---

**Judgement**

Venkatasubba Rao, J.—The point is one of some difficulty in respect to Section 42 of the Madras Estates Land (I of 1908). The landholder

filed an application before the Sub-Collector u/s 42(2) praying for an alteration of the amount of rent in respect of the excess area in the

defendant's holding. The rent which was sought to be altered, was being paid under the terms of a patta which had been for long in force. At that

time there was a previous suit filed by the landholder, pending before the Sub-Collector, for rent under the Act. The defendant had pleaded that

the rent claimed was excessive and issues had been framed in the suit. It was at this stage that the application u/s 42(2) was made.

2. The Sub-Collector heard the application and the suit concurrently and gave a consolidated decision, as it were, holding the defendant liable in

respect of a large excess area and passed a decree upon that footing, for back rent also, thus giving retrospective effect to his adjudication u/s 42.

It is not material to the question, but it may be interesting to note, that the patta rent was in respect of less than an acre and the area found by the

Sub-Collector was upwards of six acres.

3. The short point raised by this Letters Patent Appeal is, whether the Courts below are right in holding that a decree can be granted in respect of

an excess area for the past faslis also. It would be false analogy to refer to other sections of the Act, or, to other acts which contain similar but

differently worded provisions. Section 42 obviously does not refer to land in which there has been a trespass, for, there are other sections dealing

with cases of trespass. Section 163 refers to the ejectment of, and Section 45 to the rent payable by trespassers. Section 42, the provision with

which we are concerned, is a special piece of legislation involving an invasion of accrued rights. Construing the section strictly - and there can be

no doubt that such a provision should be so construed - we find it difficult to hold that retrospective effect was intended. The notion that the rent

which has been acquiesced in, can be abruptly altered with retrospective effect, seems repugnant to every legal conception. Wadsworth, J., from

whose decision this appeal has been filed, was also of the opinion that back rent cannot be claimed, but he seems to suggest the sanctity of

contracts, as the ground of his decision. We doubt, although we agree with his conclusion, if his reasoning is correct, for, the section seems to

proceed upon the footing of an absence of contract. For instance, in Section 44 which prescribes the rules for determination or alteration of rent, it

is stated that the Collector should have regard inter alia to the fact whether the rent was a consolidated rent for the entire holding. This and other

similar rules seem to exclude the idea of an inroad upon people's rights where the tenancy has its origin in an express contract.

4. In support of our view that Section 42 does not refer to back rent, we may refer to the marked contrast of its wording to that of Section 45.

The latter section deals, as already stated, with the case of trespassers. It makes the person in possession liable to pay not only what the Collector

determines to be fair rent, but, in addition, such sum as he may award as damages for unauthorised occupation; thus, this section expressly enacts

that an amount in respect of a past period can be awarded. The omission of similar words in the section in question is significant.

5. In the result, the judgment of Wadsworth, J., is confirmed and the Letters Patent Appeal is dismissed with costs.