

(1924) 04 MAD CK 0045
In the Madras High Court

C. Doraivelu Mudaliar, Trustee and Dharmakartha of
Apparswami Temple

APPELLANT

Vs

Natesa Gramani and Others

RESPONDENT

Date of Decision : 01-04-1924

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 9

Citation : AIR 1925 Mad 7 : (1924) 47 MLJ 211

Hon'ble Judges : Victor Murray Coutts Trotter, C.J.;Wallace, J;Ramesam, J

Bench : Full Bench

Judgement

Victor Murray Coutts Trotter, C.J.—This is a reference made by Phillips and Odgers, JJ., obviously because they were not satisfied with

the correctness of the decision of another Bench of this Court consisting of Spencer and Venkatasubba Rao, JJ., in Parthasarathi Aiyangar v.

Doraismami Naicker ILR (1922) M 823 : 1922 44 MLJ 91.

2. The short point referred to us is, Does the Madras Act III of 1922 apply to landlords who hold their land as trustees of a religious institution ?

The wording of the reference is not very definite, because it is conceded on all hands that the term "" landlord "" as defined in the Act must cover

persons who are landlords by virtue of their capacity as trustees of trust lands with power to let them to tenants. The real point is as to whether the

provisions of Section 9 of the Madras Act III of 1922 apply to landlords who are trust landlords by virtue of being trustees of religious or

charitable institutions.

3. The Act is a very unhappily drafted one and it is quite clear to us that any reasonable draftsman must have foreseen that a question such as the

one we have now to determine was certain to arise and should have provided for it. However, he has not done so here in express terms and it

remains to be seen whether, on the one hand, he has done so by necessary implication or on the other hand there are considerations outside the

Act which compel us to say that it does not apply to landlords in the position of trustees.

4. The preamble to the Act is this : ""Whereas it is necessary to give protection to tenants who in many parts of the City of Madras have

constructed buildings on others" lands in the hope that they would not be evicted so long as they pay a fair rent for the land.... It is hereby enacted

as follows. "" Then follows the body of the Act. In Section 2, Sub-section (3), occurs the following definition of "" Landlord "" : "Landlord" means any

person owning any land and includes every person entitled to collect the rent of the whole or any portion of the land, whether on his own account

or on behalf of or for the benefit of any other person. (I am only reading the material words). Then by Section 3, it is enacted that 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; and that 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. To pause for a moment. It seems difficult to suppose that the Act could possibly have meant to exclude from

the scope of this section a tenant who holds under a trustee or trustees of a trust or charitable endowment. The tenant has put up his building on

somebody else's land and that somebody else on ejecting him is going to get the benefit of the tenant's work, and it is enacted in perfectly general

language that in such cases the tenant shall have the benefit of his labour in the form of money compensation. It is said in this case that a landlord

who is a trustee cannot deal with the trust lands unless it be for the benefit of the trust or for purposes necessary to the trust or endowment. Exactly

the same line of reasoning would apply to the compensation provided for by Section 3. It is of no benefit to the trust to pay out part of the trust

funds whether income or capital, by way of compensation to eject a tenant, but it is a mere act of justice required to be done by the policy of the

Act. Now I pass on to the section which is really material in this case, Section 9. Sub-section (1) of that section begins thus :-"Any tenant who is entitled to compensation u/s 3 and against whom a suit in ejectment has been instituted, and then provision is made in it that such a tenant shall have power to apply to the Court for an order for the sale of the land on conditions approved by the Court with the object of putting him in the position of a purchaser of his holding. "" The words are : ""Any tenant who is entitled to compensation u/s 3. "" Prima facie that would include all tenants who have put up buildings on their landlords" land, whether those landlords are owners of the land or trustees of it. It is said that it is not so, because of the explanation appended to that section. I have always noticed in Indian statutes that, when any doubt is raised as to the construction of a section of an Act, it is usually raised by what is somewhat disappointingly called the explanation. So here, the explanation is, "" " Land " means the interest of the landlord in the land and all other interests which he can convey under any power. "" It is said that this landlord, being a trustee for a charitable or religious endowment, has no interest of his own to convey and can only convey the trust property or the trust land under conditions defined by the Hindu Law which I may summarise as being practically equivalent to a necessity arising out of the circumstances and the position of the trust at the moment; and it is on that ground that the decision in Parthasarathi Aiyangar v. Doraiswami Naicker ILR (1922) M 823 : 1922 44 MLJ 91 proceeded. But it seems to me that it is wrong to seek to control a statute, which is obviously intended to overrule the ordinary law, by general considerations imported from the Hindu Law or what is called the common law of India. A trustee landlord can convey the interest of the trust in certain given circumstances. Two of those circumstances have been already referred to, necessity and benefit for the trust, and I think there is added a further one by this new Act III of 1922, namely, when a tenant has been in possession of the land and has put up a superstructure on the land and to eject whom would be in certain circumstances plainly inequitable without compensation, and in other circumstances, such as the one contemplated by the section would be inequitable without giving him an opportunity of acquiring the land for himself on payment. That consideration appears to dispose of this case.

5. We cannot accede to the contrary opinion of Spencer and Venkatasubba Rao, JJ., in Parthasarathi Aiyangar v. Doraiswami Naicker ILR

(1922) M 823 : 1922 44 MLJ 91 and must answer the reference, not in the form of a direct answer to the question put but by saying that in our

opinion, Section 9 of the Madras Act III of 1922 applies to landlords who hold their land as trustees of a religious institution.

Ramesam, J.

6. I agree.

7. I think that the matter can also be put in a different way. Both in the case before us and in the case in Parthasarathi Aiyangar v. Doraiswami

Naicker ILR (1922) M 823 : 1922 44 MLJ 91 the plaintiffs were really the idols in the temple and their Lordships of the Judicial Committee

remarked in Vidya Varuthi v. Balusami Aiyar ILR (1921) M 831 : 1921 41 MLJ 346, that, under the Hindu Law, the image of a deity of the

Hindu Pantheon is, as has been aptly called, "" a juristic entity "" vested with the capacity of receiving gifts and holding property. The landlord of the

suit land is undoubtedly the idol of the temple within the definition of the term "" landlord "" in Section 2, Sub-section (3). That being so, there is no

difficulty in applying the explanation to Section 9 to the suit land. The explanation to Section 9 consists of two parts. The first part refers to the

interest of the landlord in the land, and the second to all other interests which he can convey under any power. The object of second clause is to

add to the first clause and not to cut it down. If any land falls under the explanation of the term as given in the first clause, one need not go to the

second clause. In this case the suit land is the land belonging to the landlord, that is the idol in the temple represented by the trustee.

8. I agree with the answer proposed by my Lord.

Wallace, J.

9. I fully agree with all that has been said by the learned Chief Justice, and I should just like to put my view in another form. If we take the

procedure which is laid down in Section 9, we find that any tenant, i.e., by definition "" any tenant of land, liable to pay rent on it"" not excluding a

tenant of land owned by a trust, is entitled to move the Court for an order that his landlord shall be directed to sell the land. It is admitted that the

trustee of trust lands comes within the definition of the term "" landlord."" When

the Court has made that order and not earlier, as I conceive it, can a trustee landlord come in to object that such an order cannot be valid because he is not entitled in law to sell the land or to alienate it permanently except for necessity. To that the Court rejoins that the order itself has just provided the necessity required and it seems to me that on that the objection of the trustee landlord must vanish, as it cannot be argued that such an order of the Court directing him to sell the land is not a necessity justifying his conveyance of the land. In this view there seems to me nothing in the Act from which one may reasonably conclude that it was not intended to apply to a trustee landlord.