

(1961) 03 KL CK 0027
In the High Court Of Kerala
Case No : A.S. No. 379 of 1959

Chalapuram Bank Ltd

APPELLANT

Vs

Mammad Koya and Others

RESPONDENT

Date of Decision : 22-03-1961

Acts Referred:

Constitution of India, 1950 — Article 254
Government of India Act, 1935 — Section 107

Citation : (1961) KLJ 504

Hon'ble Judges : T K. Joseph, J; M.S. Menon, J

Bench : Division Bench

Advocate : K. Kuttikrishna Menon and V. Balakrishna Eradi, for the Appellant;
T.L. Viswanatha Iyer, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—This is an appeal by the petitioner (decree-holder) in E. P. No. 234 of 1957, an execution petition in O. S. No. 105 of 1952 of the court of the Subordinate Judge of Kozhikode. It is common ground that the appellant is a banking company as defined in section (5)(l)(c) of the Banking Companies Act, 1949. The lower court has invoked Act 31 of 1958, the Kerala Agriculturists Debt Relief Act, 1958, and dismissed the petition. The contention of the appellant is that that Act is invalid in so far as it relates to banking companies on the ground that it is a piece of legislation coming within the ambit of Entries 43 and 45 of the Union List (List 1) in the Seventh Schedule to the Constitution and hence beyond the legislative competence of the Kerala State. The contention of the respondents (Judgment-debtors), on the other hand, is that in pith and substance the Act is no more than an ameliorative measure for the relief of agricultural indebtedness and hence within the scope of Entry 30 in the State List (List II) of the Seventh Schedule.

2. Entry 30 deals with money-lending and money-lenders and the relief of agricultural indebtedness. Relief of agricultural indebtedness was not expressly

mentioned in any of the lists in the Government of India Act, 1935. It was, however, held by the Federal Court in A. I. 1R. 1941 F. C. 47- upholding the validity of the Madras Agriculturists Relief Act, 1938 -that it would fall within the provincial subject with respect to money-lending and money-lenders, the latter part of Entry 27 of List II of that Act. The wording of the present Entry removes by specific enumeration all possible doubts on the subject.

3. The preamble to Act 31 of 1958 makes it quite clear that it is an Act to give relief to the indebted agriculturists in the State of Kerala and that it was enacted because it was considered necessary to provide for their relief. In AIR 1941 47 (Federal Court) Gwyer C. J. said:

It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions or the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute examined to ascertain its "pith and substance" or "true nature and character", for the purpose of determining whether it is legislation with respect to matters in this list or in that:

and in AIR 1947 60 (Privy Council) the Board observed

Subjects must still overlap and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to Provincial Legislation could never effectively be dealt with.

4. There is a full survey of the cases bearing on the controversy in A.L. Vr. St. Veerappa Chettiar Vs. Chinnasami alias Samba Goundan and Others, and we consider it unnecessary to go over the ground afresh. The proper approach to controversies like the one before us came up for discussion in A.S. Krishna Vs. State of Madras, . It said:

When a law is impugned on the ground that it is ultra vires the powers of the Legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. If on such examination it is found that the legislation is in substance one on a matter assigned to the Legislature, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence. It would be quite an erroneous approach to the question to view such a statute not as an organic whole, but as a mere collection of sections, then disintegrate it into parts, examine under what heads of legislation those parts would severally fall,

and by that process determine what portions thereof are intra vires, and what are not.

5. Reading Act 31 of 1958 as a whole and considering its various provisions in the context in which they occur we entertain no doubt that in pith and substance the Act comes within the ambit of Entry 30 of the State List (List II) in the Seventh Schedule to the Constitution and that its validity is beyond dispute. We decide accordingly.

6. It was suggested to us that Article 254 of the Constitution is attracted That Article relates to inconsistencies that may exist between the laws made by Parliament and the laws made by the Legislatures of the States. In A.S. Krishna Vs. State of Madras, the corresponding provision in the Government of India Act, 1935- Section 107 -came up for consideration. The Court said:

For this section to apply, two conditions must be fulfilled:

- (1) The provisions of the Provincial law and those of the Central legislation must both be in respect of a matter which is enumerated in the Concurrent List, and
- (2) they must be repugnant to each other.

It is only when both these requirements are satisfied that the Provincial law will, to the extent of the repugnancy, become void.

Such is certainly-not the case in the appeal before us.

In the light of what is stated above the appeal fails and is dismissed. The appellant will pay the costs of the respondents.