

(1913) 01 MAD CK 0001
In the Madras High Court

Kanadappa Achary

APPELLANT

Vs

P. Vengama Naidu

RESPONDENT

Date of Decision : 20-01-1913

Acts Referred:

Citation : (1914) ILR (Mad) 548

Hon'ble Judges : Sadasiva Ayyar, J; Miller, J; Charles Arnold White, J

Bench : Full Bench

Judgement

Charles Arnold White, Kt., C.J.—I have great doubts but as my learned brothers are both of opinion that the question referred to us should

be answered in. the affirmative, I do not propose to dissent.

Miller, J.

2. In this matter I am of opinion that the learned Judges who an: responsible for the reference to the Pull Bench are right in the conclusion at which

they have arrived.

3. I think it must be conceded that the construction put upon Section 3 of Madras Act III of 1895 by the learned Chief Justice and Krishnaswami

Ayyar, J., in Veerabadran Achari v. Suppiah Achari ILR (1911) Mad. 488, is that which its language most n iturally suggests, but the reasons for

holding that it is not that which ought to prevail are, to my mind, very strong; they are stated in the judgment in Mutyala Bapayya v. Kosuri

Muramullu (1912) M.W.N. 7 and I may re-state them.

4. Artisan offices wore governed by Regulation VI of 1831 whether they were situated in proprietary villages or not, and no reason or at any rate

no reason worth a moment's consideration has been suggested (and the learned

Judges who decided were unable to conceive of any reason) why those situated in proprietary villages should have been deliberately omitted from Act III of 1891") while those in other villages are governed by that Act.

5. There is, so far as I can see, no difference whatever from the point of view of the necessity of inalienability, or from the point of view of

succession to the office, between the one class and the other. I cannot in these circumstances believe that the legislature deliberately retained the

one class within the Act and omitted the oilier. Is it then necessary, by reason of the language of Section 3, to hold that that which was not done

deliberately was done by inadvertence? We should, I think, before taking this course, do all that reasonably can be done to reconcile the language

of the Act with what was beyond reasonable doubt the intention of the Legislature. And this may be done in the way suggested by Benson and

Sundara Ayyar, JJ. The language of Section 3 is, I venture to think, singularly unhappy in more than one respect, but I see nothing unreasonable in

reading the section as the learned Judges have done. I may paraphrase it somewhat with a view to put, more clearly what I think it really means. It

may be read as if it ran:

6. The offices to which the provisions of this Act are applicable are divided into the following four classes:

(1) Those offices provided for in the Village Cess Act, where that Act is, or may be, enforced: [this, I think, must be the real, though perhaps it is

not the apparent, meaning of Section 3(1)];

(2) those offices provided for by Act II of 1894;

(3) artisans' offices; and

(4) other hereditary offices in proprietary estates not being artisans' offices already included in (3) or the karnam's office (provided for elsewhere).

7. I have transposed classes (3) and (4) as perhaps making the matter slightly clearer, but that of course makes no difference. I have also made the

word "artisan" do duty for all the persons described in Section 3(4).

8. The object of the classification is, I have no doubt, that suggested in the order of reference to enable the draftsman in Sections 7, 8, 9, 10, 11

and 12 to refer to the classes by number instead of dotting out in each section

the offices to which that section was intended to be applicable. The different classes are differently treated both as regards the control of the incumbents by the Collector and the proprietor and as regards the succession to the office in the event of a vacancy. There is no other apparent reason why there should be a division into classes at all.

9. The exclusion of artisans' offices from class (3) is because they are included in class (4) and are to be dealt with differently from the offices

included in (3) and the express exception was necessary because they are hereditary village offices in proprietary estates as are those in (3).

10. I do not think this construction does violence to the language of Section 3, but if it does, I think we ought, at the risk of some straining, to

adopt a construction which gives effect to what was so clearly intended rather than a more natural one which frustrates the intention of the

Legislature.

11. The authorities are not numerous. In *Kannam Naidu v. Latchanna Dhora* ILR (1901) Mad. 493 and *Raja of Vizianagaram v. Dantivada*

Challiah ILR (1906) Mad. 84, it seems to have been assumed that the artisan offices in Zemin dari villages are included in Section 3. In *Chinnayya*

Asari v. Annayappa Mooniappa Mudali (1907) 7 M.L.J. 264 and *Sandanam v. Sonai Muthan* Appeal Against Order No. 226 of 1904 these

offices are held to be excluded, but without discussion of the question. The two cases in which the matter has been discussed are *Veerabhadran*

Achari v. Suppiah Achari ILR (1911) Mad. 488 where one view was taken, and *Mutyala Bapayya v. Kosuri Muramullu* (1912) M.W.N. 7, to

which I have already referred, where the contrary conclusion was arrived at.

12. For the reasons which I have given, I think the latter decision is correct, and I would answer in the affirmative the question referred, to us.

Sadasiva Ayyar, J.

13. The answer to the question referred to the Pull Bench depends on the interpretation of Section 3 of Act III of 1895. Section 3 says (omitting

immaterial portions) "This Act shall apply to the following classes of village offices:

* * * *

(3) The other hereditary village offices in proprietary estates except the offices forming Clause (4) below.

(4) The hereditary offices of village artisans.

14. Now if we take Clause 3 alone it means that the Act shall not apply to the excepted hereditary offices forming Clause 4--if those offices are

held in villages situated in proprietary estates, i.e., it shall not apply to village artisans, etc., in proprietary estates but shall apply only to other

hereditary village offices (other than village artisans, etc.), in proprietary estates. If we take Clause 4 alone it means that the Act shall apply to the

hereditary offices of village artisans in all villages, that is proprietary estate villages as well as ryotwari villages. What is the object of the Legislature

in excluding the offices of village artisans in proprietary estate villages in Clause (3) but again including them in Clause (4) of the same section? One

very reasonable view is that, though the words of Clause (4) include, as it stands, offices of all village artisans whether in proprietary estate villages

or in non-proprietary estate villages because Clause (3) excepted the offices of: village artisans in proprietary estates, the wide words of Clause (4)

must be confined to the offices of village artisans in villages other than proprietary estate villages. Another tenable view is that Clause (3) excepted

artisans' offices in proprietary-estates merely for purposes of defining and limiting a class of village servants who were intended to be brought

under that class for convenient reference in subsequent sections of the Act, that Clause (4) included those offices for similar convenience of

definition and reference, and that so far as the operative opening words of Section 3 were concerned, those offices were also intended by Clause

(4) to be brought under the operation of the Act, The first of the two views was taken in *Veerabhadran Achari v. Suppiah Achari* ILR (1911)

Mad. 488, while the second view Was taken in *Mutyala Bapayya v. Kosuri Muramullu* (1912) M.W.N. 7. In such cases of ambiguity

considerations based on the scheme of the Act and the previous history of the Legislation relating to the matters dealt with in the Act might

properly be referred to for deciding which, of the two views ought to be taken. See Maxwell on Statutes, Chapter III and Section 1 of Chapter

IV.

15. Having in mind such considerations I am inclined to take the second of the above two views. I need not detail the said considerations as they

have been set out with sufficient fulness in *Mutyala Bapayya v. Kosuri*

Muramullu (1912) M.W.N. 7 above referred to, and as I further concur in the views formulated in the judgment just now pronounced by my learned brother Miller, J.