(1984) 11 MAD CK 0023

In the Madras High Court

Mookan Ambalam APPELLANT

Vs

The Revenue Divisional Officer and Others RESPONDENT

Date of Decision : 21-11-1984

Acts Referred:

Citation : (1985) 2 MLJ 430

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The petitioner is a creditor who had advanced certain sums of money to the third respondent on the mortgage of his

property. The third respondent filed an application on 14.5.1980 before the second respondent claiming relief under Tamil Nadu Act 31 of 1976

on the ground that he is an agricultural labourer entitled to the benefits of that Act. The said application was opposed by the petitioner on the

ground that the third respondent was not an agricultural labourer and therefore, he cannot claim the benefits of Tamil Nadu Act 31 of 1976. The

contention was accepted by the second respondent who rejected the application on the ground that the third respondent being not an agricultural

labourer, cannot claim the benefits of Tamil Nadu Act 31 of 1976. As against the said order rejecting his application the third respondent filed an

appeal before the first respondent. The first respondent had upheld the order of the second respondent holding that the third respondent is not

entitled to the benefits of Act 31 of 1976, he being neither a small farmer nor an agricultural labourer. He however proceeded to hold that

nevertheless, the third respondent is entitled to the benefits of Tamil Nadu Act 13 of 1980 as his family income is less than Rs. 4,800/- per year.

The said order of the first respondent dated 6.7.1981 granting relief to the third respondent under Act 13 of 1980 had been challenged in this writ

petition on two substantial grounds, namely (1) when the respondent has claimed the benefits only under Act 31 of 1976 and his request having

been rejected, the first respondent has no jurisdiction to consider his claim for benefits under Act 13 of 1980 and (2) that in any event, the first

respondent had no material before him to hold that the family annual income of the third respondent was less than Rs. 4,800/- especially when the

enquiry before the original authority, the second respondent was not in relation to that question as the third respondent never claimed to be under

Act 13 of 1980 and the income limit of Rs. 4,800/- is material for the application of Act 13 of 1980.

2. On a due consideration of the matter, I am of the view that both the contentions urged on behalf of the petitioner have to be accepted as

tenable. In this case, the order of the second respondent clearly says that the petitioner applied for relief under Tamil Nadu Act 31 of 1976 on the

ground that he is an agricultural labourer. But the second respondent found from the income certificate issued by the competent authority that the

petitioner''s principal means of livelihood is not derived from agriculture or agricultural lands but it represents handicapped pension and his major

son''s monthly salary in a coir making factory. On this basis, the second respondent held that as the third respondent is neither a landless

agricultural labourer nor a small farmer as defined in Section 3 of Act 31 of 1976, he is not entitled to claim the benefits under that Act. When the

matter was taken up on appeal to the first respondent, the decision of the second respondent on the question as to whether the petitioner is entitled

to the benefits of Act 31 of 1976 has been upheld. But the first respondent holds that the third respondent is entitled to the benefits of Act 13 of

1980 as his annual income is less than Rs. 4,800/-. As already stated, the 3rd respondent''s claim for benefits was only under Tamil Nadu Act 31

of 1976 and at no stage, he claimed benefits under Act 13 of 1980. If really he wanted the benefits under Act 13 of 1980, the third respondent

could have amended his original application claiming benefit under Act 31 of 1976 or filing another application claiming benefit under that Act. As a

matter of fact, the application filed before the second respondent seeking benefits under Act 31 of 1976 has been filed on 14.5.80 while the Act

13 of 1980 has come into force from 19.4.1980. Therefore, he was in a position to claim benefits under Act 13 of 1980 even when he filed the

application even on 14.5.1980 claiming the benefits under Act 31 of 1976. When the third respondent has not claimed specifically or otherwise

any benefit under Act 13 of 1980, I do not see how the first respondent can sit in appeal against the order of the second respondent holding that

the third respondent is not entitled to the benefits under Act 31 of 1976 and granting relief under Act 13 of 1980. It is significant to note that the

subject matter of appeal before the first respondent was as regards the third respondent''s entitlement for the benefits under Act 31 of 1976. His

entitlement if any, under Act 13 of 1980 was not the subject matter of appeal before the first respondent. Therefore, the first respondent cannot

proceed to decide the question as to whether the petitioner is entitled to the benefits under Act 13 of 1980 or not in the appeal filed by him against

the order passed by the second respondent holding that he is not entitled to the benefits under Act 31 of 1976. Therefore, that portion of the order

of the first respondent which declares that the third respondent is entitled to the benefits of Act 13 of 1980 should be taken to be without

jurisdiction and that portion of the order will stand quashed. The writ petition is ordered accordingly. But there will be no order as to costs.