

(1956) 11 MAD CK 0001
In the Madras High Court
Case No : Writ Petition No. 646 of 1956

N. Sundararaja Iyer

APPELLANT

Vs

Sub-Collector of Dindigul and Another

RESPONDENT

Date of Decision : 26-11-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Constitution of India, 1950 — Article 14, 19(1), 19(5)

Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 4(1), 4(2), 4(4), 6

Citation : AIR 1957 Mad 333 : (1957) ILR (Mad) 571 : (1957) 70 LW 221

Hon'ble Judges : Rajagopalan, J; Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : S.V. Subramaniam, A.V. Narayanaswami Iyer and R. Venkatachalam, for the Appellant; A.G., Special Government Pleader, S. Mohankumaramangalam, K.V. Sankaran, V. Kumaraswami and T.V. Srinivasachari, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopala Aiyangar, J.—The constitutional validity of the Madras Cultivating Tenants Protection Act, XXV of 1955 is challenged in this

petition for the issue of a writ of certiorari to quash an order of the Sub-Collector, Dindigul, dated 17-4-1956 who acting u/s 4 of the Act directed

the restoration of the 2nd respondent, Rakkappan Servat, to the possession of certain lands belonging to the petitioner,

2. The land which forms the subject-matter of the dispute in the present proceedings is of an extent of about 3 acres situated in the village of

Mannadimangalarn in Nilakottai taluk. The 2nd respondent claimed that he along with one Ayyaswami Pillai was jointly cultivating these lands

under a lease deed executed on their behalf in favour of one Sadastvam pillai. Their case was that the joint family of the petitioner and his elder

brother was the owner, of the land and that in or about May, 1953, the petitioner's elder brother Rajagopala Aiyar now deceased leased the lands to Sadasivam Pillai for a period of one year. Rajagopala Aiyar died in July 1953 and since then the petitioner has been in management of this property on behalf of his family.

The 2nd respondent further stated that he was evicted from the lands in 1954 and one Sengiah Servai was inducted as a tenant. The 2nd respondent filed an application u/s 4 of the Cultivating Tenants Protection Act (which we shall here-after refer to as the impugned Act) which enables every cultivating tenant, who was in possession of any land on the 1st December 1953 and who is not in possession thereof at the commencement of this Act (27th September 1955) to obtain restoration of possession by application to the Revenue Divisional Officer. This right is however subject to certain exceptions set out in Section 4 (2) of the impugned Act. But it is common ground that none of these latter applied to the 2nd respondent or disabled him from obtaining the order.

2a. Before the Revenue Divisional Officer to whom the 2nd respondent made the application, the petitioner contended that the tenant in cultivation of the lands in December 1953 was not the 2nd respondent or Ayyaswami but Sadasivam Pillai and that Sadasivam Pillai had voluntarily relinquished possession of the lands by May 1954. he being then in arrears of rent and that, the lands had thereafter been leased to Sengiah Servai who had been continuing in possession from 31-5-1954 onwards. Evidence was led on behalf of the two parties and the Revenue Divisional Officer found that it was Rakkapps Servai the 2nd respondent who was in actual cultivation of the lands in 1953-54 that is on the crucial date. On this finding the petition was allowed and the restoration of the 2nd respondent to the lands in dispute ordered. It is the validity of this order that is challenged in this writ petition.

3. Two grounds have been put forward by learned counsel for the petitioner in challenge of the validity of this order of the first respondent, the Sub-Collector of Dindigul. The first was that the impugned Act and Section 4 were repugnant to the fundamental rights guaranteed by Part III of the Constitution and were therefore unenforceable and the second, that the 1st respondent, officer, had failed to follow the procedure prescribed

by Section 4 (4) of the Act and that the order for restoration was consequently invalid.

4. We consider it convenient to dispose of the second ground first before, dealing with the more important objection raised to this order. Section 4

(4) prescribes the procedure to be followed by the Revenue Divisional Officer on receipt of an application from a cultivating tenant who claims

restoration to possession of the land of which he was in possession on 1-12-1953. The subsection runs thus:

On receipt of an application under Sub-section (3) the Revenue Divisional Officer shall, after giving a reasonable opportunity to the landlord and

the cultivating tenant, if any, in possession of the land, to make their representations, hold a summary enquiry into the matter and pass an order

either allowing the application or dismissing it. In passing an order allowing the application, the Revenue Divisional Officer may impose such

conditions as he may consider just and equitable including conditions in regard to.....

5. We have already adverted to the fact that it was common ground that Sengiah Servai was actually in cultivation of the lands on the date of the

application. In the application filed by Rakkappa Servai only the proprietors of the lands that is the. petitioner and his brothers were made party

respondents. The objection now raised to the order is that the Revenue Divisional Officer did not afford a reasonable opportunity to Sengiah

Servai the cultivating tenant in possession of the lands to make his representations as required by Section 4 (4) before disposing of the application.

We have examined the records of the case and we find that this contention is without any basis. No doubt in the cause title to the application only

the proprietors were impleaded as respondents but when they appeared before the Revenue. Divisional Officer and filed their statement, in which

they stated that Sengiah Servai was in possession, the Revenue Divisional Officer directed notice to this individual who appeared at the enquiry and

was examined as a witness. It was after considering his evidence and the representations of Sengiah Servai that the present order was passed.

This"" objection therefore is without force and is rejected.

6. Learned counsel for the petitioner urged four grounds in support of his attack on the validity of the impugned enactment. (1) Section 4 (1)

compels an owner to restore a cultivating tenant to possession, this contravenes an owner's right to choose the person who shall cultivate his lands.

Article 19(1)(f) guarantees to all the citizens the right Inter alia "to hold property". The right "to hold property" includes a right to choose the tenant.

The law in question which compels a landlord to admit a tenant who was once in possession to be restored to possession against the will of the

landlord is thus in violation of the freedom guaranteed by Article 19(1)(f) and this is not saved by Article 19(9) Of the Constitution.

(2) Section 4 is an unreasonable restriction on the right of a landlord to carry on a business or occupation of an agriculturist and is therefore

repugnant to Article 19(1)(f) which guarantees the freedom to carry on any occupation, trade or business.

(3) Section 4 (2) (ii) which draws a distinction between landlords holding 6-2/3 acres of Wet land or its equivalent and those owning less extent of

lands is discriminatory as regards the former and is founded on a classification which has no rational basis.

(4) Section 6 which bars the jurisdiction of civil Courts is violative of Article 14.

7. We shall now deal with each of these points separately. We shall first consider whether the provisions of Section 4(1) are repugnant to the

freedom guaranteed by Article 19(1)(f). Learned counsel for the petitioner urged that the freedom to "hold property meant a right to enjoy

property and that if there was any interference with the enjoyment of property it was tantamount to interference with the right "to hold property".

To this extent learned counsel is supported by authority and even by the ordinary meaning attributable to the words of the Constitution. From this

the next step in the argument was that the right to enjoy property involved a right to enjoy it in such manner as the owner chose including a right (a)

of choosing his tenants and (b) of resuming personal cultivation.

We are not disposed to quarrel with this import of the freedom guaranteed but the real question for consideration is whether the restrictions

imposed on this freedom are reasonable as to fall within Article 19(5) of the Constitution. Article 19(5) saves the operation of any law

imposing reasonable restrictions on the exercise of any of the rights conferred by the said Sub-clauses (d, e and f) either in the interests of the

general public or for the protection of the interests of any scheduled tribe.

The interests of any scheduled tribe are not involved in the present legislation and therefore what we have to consider is whether the provisions of

the impugned enactment including Section 4 are or are not a reasonable restriction on the right "to hold property understood as above explained. In

considering the reasonableness of this provision we have necessarily to take into account the economic background of the legislation as well as the

fact that on the terms of Section 1 (3) the Act would remain in force for a period of one year.

8. Two matters have to be taken into account in dealing with the economic background of the impugned Act. The first is that afforded by the

pattern of tenancy legislation in the State for nearly half a century. After a good deal of agitation on the part of tenants who were cultivating lands

under zamindars and proprietors of estates the Madras Estates Land Act was passed in 1908 Which conferred on tenants, considerable body of

whom held under terminable "leases, a permanent right of occupancy in the land. Section 6 of the Madras Estates Land Act (Act I of 1908)

enacted:

6 (I) Subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti

land situated in the estate of such landholder shall have a permanent right of occupancy in his holding.

This right of occupancy was a heritable and transferable right and these ryots could be evicted from their holdings by suits before revenue Courts

and only on the ground

that the ryot has materially impaired the value of the holding for agricultural purposes and rendered it substantially unfit for such purposes" (Section

151).

For arrears of rent a landholder could only "proceed to sell the holding which meant that the land would be cultivated by the purchaser as a ryot.

There was no interference however with the ryot-wari proprietors by legislation for some time. The

tenure in Malabar was peculiar, complete proprietorship vesting in the jenmi, who had unrestricted powers of eviction over cultivating tenants who

fell into various" categories and held on customary tenures of different grades

The Malabar Tenancy Act (Act XIV of 1930) gave fixity of the tenures to

verumpattamdars and ensured them freedom from eviction except on stated grounds (Section 10). Section 15 enabled an evicted verumpattamdar falling within certain categories to obtain restoration of possession by suit (compare also with Section 21). These two enactments have been the subject of frequent amendments before the constitution by which their scope has been progressively widened so as to embrace larger categories of cultivators. It is therefore clear that the right of a landholder to resume personal cultivation by evicting a tenant has been subject to regulations and restrictions by legislation stretching nearly half a century, Correspondingly there has been a conferment by statute of fixity of tenure to tenants.

So much so that the duration of these tenancies is not fixed by contract but by law and the tenants cannot be evicted except on stated grounds.

This antecedent history is certainly relevant in considering what society considers proper and therefore what the legislature could treat as

reasonable. We might also mention that both under the Estates Land Act and the Malabar Tenancy Act, there is provision for the fixation of fair

rent so that the rent payable by a tenant is not to be rack-rent determined by contract but by what the legislature considers as fair--fair- to the

landowner as well as to the cultivator.

9. Subsequent to the Constitution we have had the Tanjore Tenants Fannaiyal Protection Act (Act XIV of 1952) which prohibited eviction for a

time and contained provisions for the restoration to possession of evicted tenants. It will be seen therefore that the impugned Act falls generally in

to the pattern of these several pre-Constitution enactments which is certainly a relevant factor for considering whether the restriction imposed is

reasonable or not,

10. The other factor which we have in mind is the economic pattern envisaged by the two five year plans particularly the second one which

includes so far as land ownership to concerned four factors: (1) A ceiling on landholding, in line with Clauses (b) and (c) of Article 39 of the

Constitution which enjoins on the State to direct its policy towards securing

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common; and (c) that the

operation of the economic system does not result in the concentration of wealth

and means of production to the "common detriment.

(2) There should be a limit to which personal cultivation should be permitted.

(3) The cultivators and cultivating tenants should have fixity of tenure.

(4) The rent payable for the use of the land by the cultivator should be fair. The precise content of even the form of the legislation has not been

finalised though the second five year plan has been published formulating these principles as those to be followed to achieve economic stability for

the Country.

11. The result of this uncertainty as regards the content and form of the intended legislation has been that the various classes of landowners as well

as cultivators have been trying to queer the pitch by consolidating their position. This aspect of the matter is referred to in second five year plan at

page 185 thus:

During the past few years, there have been instances in some States of large-scale ejectment of tenants, and of "voluntary surrender" of tenants.

The main causes are ignorance on the part of the people of "legislative provisions regarding security of tenure, possible lacunae in the law,

inadequate land records and defective administrative arrangements. Most "voluntary surrenders" of tenancies are open to doubt as bona fide

transactions. It is recommended that action should be taken to stay ejectment of tenants and sub-tenants except on ground of non-payment of rent

or misuse of land. Ejectment of tenants and surrenders which may have taken place during, say, the past three years should be reviewed with a

view to restoration wherever circumstances Justify such a course. In order to discourage "voluntary surrenders" of land under undue pressure, for

the future, provision may be made that surrender of land by a tenant will not be regarded as valid unless it is duly registered by the revenue

authorities. In such cases the landlord should be entitled to take possession of the land only to the extent of his right of resumption.

This statement refers to the problem as It exists in the country in general. So far as this State is concerned, it was not immune for such "activity and

in the statement of objects and reasons of the Bill which became the impugned Act it was said:

It has been brought to the notice of Government that in anticipation of land reforms legislation owners of land are evicting tenants with a view to

bringing the lands under their personal cultivation. Such large scale eviction will, if allowed to continue lead to agrarian trouble and disturbance and

to breach of peace. The object of this Bill is to protect the tenants from unjust eviction for a period of one year.

A tenant will not however be entitled to protection if he is in arrear of rent or has done any act which is destructive of, or injurious to. the land or

any crop thereon, or has ceased to cultivate the land or has used it for any purpose other than for which it was left. Suitable provision has been

made for restoring land to any cultivating tenant who was in possession of it on the 1st December 1954.

12. It maybe mentioned that during the second reading of the Bill in the legislature 1-12-195S came to be substituted for 1-12-1954.

13. In view of the matters set out above we are unable to uphold the argument advanced on behalf of the petitioner that no emergency has been

proved to exist to Justify this interference with the rights of the landholder; Learned counsel urged that legislation similar to the impugned one

contained in the Tanjore Tenants and Pannaiyal protection Act (Act XIV of 1952) was sustained by this Court in Santhanakrishna Odayar Vs.

Vaithilingam and Others, as a reasonable restriction within Article 19(5) of the Constitution by reason only of the existence of an emergency which

called for such drastic curtailment of rights in property. It is true that the learned Judges when dealing with the constitutional validity of the Tanjore

Tenants and Pannaiyal Protection Act did In part rest their reasoning on the two factors, namely, that it was a piece of temporary legislation and

secondly that it was passed to meet an. emergency.

So far as the impugned Act is concerned, it is and the statement of objects and reason which we have extracted above shows that it has been

passed to maintain the status quo pending permanent legislation. We are not however persuaded that this would not be an emergency which might

justify a legislation of this type, nor are we satisfied that the only emergency which could justify a drastic curtailment of rights is one with an

immediate possibility of danger to public peace, which is framed to exist as a fact before the Court.

14. Learned counsel for the petitioner next urged that the fact" that the legislation is retrospective is an element to be taken into consideration in

dealing with its reasonableness so as to conform to the requirements of Article 19(5). As a general proposition this is unexceptionable but we are

not satisfied that the retrospectivity has gone beyond the limits of reasonableness. Learned counsel for the petitioner further pointed out the

distinction between the nature of the rights conferred by Section 3 which might be loosely termed the prospective operation of the legislation and

Section 4 which is retrospective in character. He urged that u/s 3 there could be eviction in the event of the tenant being in arrears as regards rent,

and

being guilty of any negligence which is destructive of, or injurious to, the land or any crop thereon or has altogether ceased to cultivate the land; or

having used the land for any purpose not being an agricultural or horticultural purpose; or wilfully denied the title of the landlord to the land.

A tenant who has been evicted from his holding before the commencement of this Act and who falls within categories specified in Section 4 is still

entitled to restoration to possession. No doubt this is a serious objection but in our opinion it is not sufficient to render the right to restoration to

possession conferred by Section 4 unconstitutional. - The eviction that is provided for by Section 3 is an eviction through Court but the evictions

that might have taken place between 1-12-1953 the date referred to in Section 4 and 27-9-1955 the commencement of the Act might include

evictions through force.

The Act is designed to be enforced for a period of one year and if the right to restoration was to depend on the eviction being proved not to have

been on grounds specified in Section 3, the enquiry might well take beyond one year which constitutes the life of the enactment. If on these and

similar grounds the legislature considered it inadvisable and impracticable to have a judicial enquiry as regards the circumstances in which, a couple

of years before the date of the application, an eviction took place, it cannot be said that the legislature out-stepped the limits of reasonableness.

15. Learned counsel also urged that whereas u/s 4 (2) a limit had been prescribed as to the maximum extent of other land to be owned or

possessed by a tenant and other qualifying" considerations imposed before a tenant could claim restoration, these had been wholly omitted from

consideration when dealing with the future, u/s 3. This again we consider is

merely a legislative policy and if Section 3 could be upheld as valid in the absence of Section 4(2) it cannot be rendered invalid by the enactment of conditions for restoration to possession.

16. Lastly it was urged that there was no rational principle behind the limit of 6-2/3 acres of wet land prescribed by Section 4 (2). We are wholly unable to appreciate this argument. In our opinion it is based on a classification of bigger and smaller land owners and it has specified the reasonable extent of land which could be the subject of personal cultivation by the landlord himself. It is therefore based on a reasonable classification.

Whether the extent ought to be 6-2/3 acres either more or less is a matter of legislative policy with which the Court has no concern. The only consideration to be taken into account is whether the extent specified is so unreasonable as to render the classification itself without meaning, and this it is not.

17. Learned counsel for the petitioner faintly urged that the restriction imposed on the rights of the landowner in the present case, though it might be in the interests of cultivating tenants, was not in the interests of the general public and did not therefore conform to the type of restrictions contemplated by Article 19(5). We are clearly of the opinion that there is no foundation for this argument which must be repelled. In the first place agriculture still forms the backbone of the country's economy.-

It is therefore of prime importance to the community that reasonable incentives are offered for securing the optimum of agricultural production. It would also follow that the contentment of the general well-being of the classes engaged in agriculture should be secured. Opinions might differ as to policy or the measures which would bring about these favourable conditions. Indeed learned counsel went so far as to suggest that the policy put forward in the Second Five Year Plan and the measures which are being taken to implement it, would impede and not further the objective in view.

It is not the province of the Court to assess or examine the policy or wisdom of the legislation: that is the exclusive function of the legislatures constituted by the duly elected representatives of the people.

18. We unhesitatingly reject the contention urged that the restriction imposed on the right to hold property enacted by the impugned Act is one not

in the interests of the general public. We are therefore of the opinion that Section 4 has not been proved, to be invalid by reason of its repugnancy

to Article 19(1)(f).

19. The second contention of learned counsel was that Sections 3 and 4 and in fact the entire enactment were repugnant to Article 19(1)(f) and

were not saved by Article 19(6) of the Constitution. In this connection learned counsel relied on the decision of the Supreme Court in *Captain*

Ganpati Singhji Vs. The State of Ajmer and Another, . The case concerned the validity of Section 40 of the Ajmer Laws Regulation of 1377.

which enabled the Chief Commissioner to frame rules regarding the establishment of a proper system of conservancy and sanitation at fairs. Under

the rules so framed the District Magistrate was empowered to revoke any permit granted for conducting a fair without assigning any reasons or

giving any previous notice.

The appellant was a landholder on whose land a cattle fair had been held every year for 20 years previous to 1951. He applied to the District

Magistrate for permission to continue this fair but this was refused on the ground that permits would not be issued to private individuals. The

appellant challenged the constitutional validity of the regulation as well as the order of the District Magistrate purporting to be under the bye-law

framed thereunder and the Supreme Court upheld his contention. The passage relied on by learned counsel for the petitioner is one in the Judgment

of Bose J. reading:

It is admitted that the land on which the fair is normally held belongs to the appellant.... The holding of an annual fair is an occupation or business

within the meaning of Article 19(1)(f), therefore, the appellant also has a fundamental right to engage in that occupation on his land provided it does

not infringe any law imposing "reasonable restriction on that right in the interest of the general public" or any law "relating to (1) the professional

or technical qualifications necessary for practising.....or carrying on the occupation or business in question (Art. 19(6) as amended in 1951).

20. Whatever might be said of the right to hold a fair on the land, we are clearly of the opinion that the right of an owner personally to cultivate his

land is not a right to carry on an occupation but only a right to hold or enjoy, the property. This apart, we are of the opinion that there is no

restriction on the petitioners right to carry on business as an agriculturist which is what the learned counsel urged on his behalf, because he can still carry it on provided he can acquire land on which to do so.

The freedom guaranteed by Article 19(1)(f) is not one to carry on an occupation or business in any particular place, but the clause is designed to

ensure that"" no unreasonable fetters shall be imposed if one were minded to engage oneself in it. T.B. Ibrahim Vs. Regional Transport Authority,

Tanjore, . We are clearly of the opinion that the objection that the impugned enactment is repugnant to Article 19(1)(f) is without any substance.

21. The next point urged by learned counsel for the petitioner was as regards the effect of Section 6 on the validity of the enactment. This section

which bars the jurisdiction of civil courts enacts:

"No civil court shall, except to the extent specified in Section 3 (3), have Jurisdiction in respect of any matter which the Revenue Divisional officer

is empowered by or under this Act to determine and no injunction shall be granted by any court in respect of any action taken or to be taken in

pursuance of any power conferred by or under this Act.

22. The contention urged on this head was that the ousting of the jurisdiction of civil courts to hear disputes between landlords and tenants

governed by this enactment was a denial of the equal protection of the laws to the classes of landlords and was therefore obnoxious to Article 14

of the Constitution. It was also urged that as no appeals had been provided from the orders of the Revenue divisional officers this constituted a

further violation of Article 14. This objection does not in our opinion merit serious consideration.

The setting up of revenue courts manned by officers of the Revenue department has been the general pattern of tenancy legislation for over a

century, and the vesting therefore of powers in a revenue court instead of in a civil court cannot be objected to on the ground that the presiding

officer of the former court has not the equipment necessary to deal properly and justly with the questions entrusted to his jurisdiction. We would

only add that it should be for the legislature to prescribe the machinery for adjudicating disputes and no constitutional objection could be raised on the

score that the adjudicating machinery set up does not conform to any particular type or pattern

Nor do we see any point in the objection that the failure to provide for an appeal from the order of the Revenue Divisional officer vitiates the law on

the ground of a denial of equal protection. After all an appeal is wholly a creature of statute and there is no common law or general right to appeal

unless the statute so provides. In these circumstances we reject this ground of objection that the enactment violates Article 14.

23. The last point urged was that Section 4 was discriminatory against landlords owning more than 6-2/3 acres of wet land and was not founded

on any rational basis. We have considered this point already and in view of what we have stated earlier this contention is rejected. In our judgment

therefore the impugned enactment is a valid piece of legislation.

24. The result is that the writ petition fails and is dismissed. There will be no order as to costs.