

(1961) 07 MAD CK 0005
In the Madras High Court

Nachal Achi by Agent S.V.R. Muthappa Chettiar	APPELLANT
Vs	
Sowrimuthu Udayar and Others	RESPONDENT

Date of Decision : 21-07-1961

Acts Referred:

Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 4

Citation : (1962) 1 MLJ 361

Hon'ble Judges : Ganapatia Pillai, J

Bench : Division Bench

Judgement

Ganapatia Pillai, J.—This batch of Civil Revision Petitions arises out of a common order made by the Special Deputy Collector,

Tiruchirapalli in a batch of petitions filed by the landlord for eviction against 11 tenants. It was alleged that the tenants had refused to pay rent due

for 1957-58 samba crop. It is common ground that the tenancy agreement was a waram agreement by which the landlord and the tenant had

agreed to share the crop equally with the additional burden of the landlord being liable to pay half a markkal per kalam out of the yield for wages

for harvesting the crop. It is also agreed that two bundles of straw for every five kalams of the gross produce had to be delivered by the tenant to

the landlord. A lease deed embodying these terms had been executed by all the tenants (respondents) in favour of the landlord for the year prior to

the year of the petition. Admittedly in the year 1957-58, disputes arose, the tenants claiming that they would be liable to pay only 40 "per cent, of

the gross produce and the landlord resisting the said claim. Obviously, the tenants' claim was based upon the provisions of the Madras Act XXIV

of 1956. But the landlord refused to accept 40 per cent, of the gross produce as rent. The tenants then sent notices to the landlord requesting the

landlord to be present at the harvest. Conveniently the landlord kept away from the harvest. Thereupon the tenant deposited what according to them represented 40 per cent, of the gross produce in the Sub-treasury at Keeranur taking advantage of the provisions of Section 3(3)(a) of the Cultivating Tenants' Protection Act (Act XXV of 1955). On the basis of the deposit, they requested the Special Deputy Collector to dismiss the eviction petitions.

2. The Deputy Collector found that the deposit u/s 3(3)(a) of Act XXV of 1955 was not an answer to the claim for eviction. He did not record a finding as to what the gross produce was from each of the fields in question under the cultivation of the respective tenants. Rejecting the evidence let in on both sides as unreliable and without recording a finding as regards the gross produce gathered from each field, he dismissed the petitions on the ground that the landlord should apply for fixation of fair rent.

3. Obviously the Deputy Collector had no jurisdiction to dismiss the petitions on the ground that no fair rent had been fixed in the case. If no fair rent had been fixed, it was his duty to find out what was the rent payable under the contract, if there was a contract applicable to the parties or under the law. In one portion of his order, the Deputy Collector has expressed the view that the rent payable to the landlord would be 50 per cent, of the gross produce because that was the rent which the tenants had agreed to pay in the previous year, namely, 1956-57. The Deputy Collector found that the agreement held good for 1957-58 also. On the other hand, the evidence in the case shows that there was no agreement between the parties as to how the produce was to be shared in 1957-58 because the tenants were insisting upon their rights to pay only 40 per cent, of the produce, while the landlord was not willing to accept the reduced share. This is therefore not a case where there was a contract as regards rent which was agreed to by all the parties. In the absence of such a contract, the Deputy Collector was not justified in coming to the conclusion that the contract-rent between the parties was 50 per cent, for the landlord.

4. Balakrishna Ayyar, J., had to deal with a similar case in *M.T. Viswanathan Chettiar by Power of Agent, Balasubramania Iyer Vs. Munian Samban and Others*, . The head-note in that case reproduces correctly the decision of the learned Judge. I quote from that head-note.

Where a cultivating tenant had executed waram chits in favour of his landlord undertaking to pay rent at 60 per cent, of the gross produce, it

cannot be held that so far as the tenant is concerned, the agreement entered into by him becomes totally unenforceable on the coming into force of

Act XXIV of 1956. Only those portions of the agreement which are repugnant to the Act would be superseded by the Act; in other respects the

agreement would prevail with the result that the landlord would be entitled to have his rent paid in kind. Until the fair rent under the Act is fixed the

landlord would be entitled to 40 per cent, of the gross produce, instead of the 60 per cent, agreed to in the waram chit, on the basis of the

presumption that contract voluntarily entered into between the parties is a fair and reasonable one, though by reason of Section 4 of the Act, the

proportion of 60 per cent, has to be altered into 40 per cent.

5. The present case is a stronger one because unlike the case before Balakrishna Ayyar, J., there was no concluded agreement in this case relating

to the year in question. The waram chit in this case related only to the prior year and the tenants had refused to execute a similar waram chit for the

year in question. I am in respectful agreement with the view expressed by Balakrishna Ayyar, J., and I hold that that principle would apply here

also. Both the Madras Cultivating Tenants' Protection Act (XXV of 1955) and the Madras Cultivating Tenants' (Payment of Fair Rent) Act

(XXIV of 1956) should be read together on this point. I am aware that some decisions of this Court have held that in the case of fixed rent payable

under the tenancy agreement lawfully entered into between the parties, and applicable for the year in question, the landlord was entitled to insist

upon payment of the rent agreed upon as a condition of eviction. Decisions of this Court holding that till fair rent is fixed in such a case, the rent

applicable would be the rent agreed to between the parties under the contract do not touch this case, because here no fixed rent is payable. No

rent at all is payable in terms of any particular quantity of paddy because what is to be payable as rent depends upon the produce of each crop. I

am, therefore, of opinion that decisions of this Court relating to fixed rent cases would not apply here and the Deputy Collector was wrong in

thinking that 50 per cent, of the gross produce could be claimed as rent by the landlord.

6. What is fair rent is defined by Section 4 of Act XXIV of 1956. It is 40 per cent of the normal gross produce or its value in money. In this case, it must be gross produce of the year in question. Since the paddy or grain that was produced would not be available it would be the duty of the Deputy Collector to fix the value of the rent payable in kind by taking the market rate for such grain. Section 3 of Act XXIV of 1956 declares the liability of a tenant to pay only rent in accordance with the fair rent payable under the Act, and the obligation of the landlord to collect what was fair rent under the Act. This declaration of the law takes effect from the date when the Act comes into force. But where the rent is payable not by reason of any agreement between the parties but only by reason of the provisions of the statute law, the rent payable would be fair rent as defined in Section 4 of Act XXIV of 1956. The order of the Deputy Collector dismissing these petitions is, therefore, set aside and, he is directed to restore the petitions to his file, to ascertain the gross produce of each field in the cultivation of the tenants and to fix the rent payable to the landlord in accordance with fair rent as defined in Section 4 of Act (XXIV of 1956) and to give time for the payment of such rent after taking into account the amount already deposited by the tenants in the Sub-treasury at Keeranur. There will be no order as to costs.