

(1977) 04 MAD CK 0004
In the Madras High Court

Nagarajan

APPELLANT

Vs

The Executive Officer, Sri Swaminathaswamy Devasthanam
and Others

RESPONDENT

Date of Decision : 20-04-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1977) 90 LW 630 : (1977) 2 MLJ 328

Hon'ble Judges : T. Ramaprasada Rao, O.C.J.

Bench : Single Bench

Judgement

T. Ramaprasada Rao, Officiating C.J.

1. The appellant, who lost before Mohan, J., in a writ petition filed by him for the issuance of a writ of certiorari and for quashing the order passed

by the third respondent in the writ petition, who in turn confirmed the order of the second respondent, has filed this appeal. The facts have been

summarised by Mohan, J., and it is unnecessary for us to re-state it. But for purposes of continuity we extract them:

An extent of 4.93 standard acres in Adanur Village, Papanasam Taluk, Thanjavur District, which were belonging to the first respondent were

leased out to one Kaliyaperumal. The said Kaliyaperumal died in the year 1972. The writ petitioner being the brother of the deceased

Kaliyaperumal was said to be cultivating the lands for some time. The special Deputy Collector, Tiruvarur, conducted an enquiry into the lease of

the lands belonging to the temple and found that the writ petitioner was not cultivating the lands but one Subramaniam was actually cultivating the

lands.

The learned Judge, however, did not countenance the arguments of the appellant on the ground that a pragmatic rather than a pedantic approach to

the problem is necessary. He was of the view that having regard to the purport and object of the Tamil Nadu Public Trust Act, 1961 the second

respondent, who passed the order initially, and the third respondent, who confirmed it later, were or should be deemed to have acted within the

limits of the jurisdiction provided for and stated in the provisions of the above Act. But the learned Judge finds that the petitioner is an interloper.

He also preferred the oral evidence given by the petitioner that he was not cultivating the property and that one Subramaniam was actually in

occupation of it and cultivating the same. Nevertheless, the learned Judge thought that the statutory functionaries under the Act such as the second

and the third respondents could act u/s 14-A and pass the challenged order. He upheld the said order which directed the petitioner to restore the

subject-matter of the proceedings to the trust. Incidentally, another fact was also brought to his notice. The public trust in question, which is the first

respondent, did file an application treating the writ petitioner as a cultivating tenant. But it transpires that the said application has been withdrawn

and there is some controversy about it. It is not necessary to dwell on this aspect of the case as it would not be a relevant matter for consideration.

2. Mr. Peter Francis, learned Counsel for the appellant, after taking us through the merits, would contend that there is no express provision in the

Tamil Nadu Public Trust Act, 1961, which would authorise either the second or the third respondent to act in the manner they did and pass the

order which is challenged herein. According to him, if once the lands belonging to the trust are in the occupation of an interloper, then, such a

person cannot be badged with the status of a tenant or a lessee and much less a cultivating tenant which has a special, meaning in agrarian

legislation. A fortiori therefore, and on the facts found the learned Counsel says that if the petitioner is himself an interloper, then Subramaniam,

who is actually found to be in occupation and cultivating the property, is certainly one who has no right, either contractual or otherwise, to be in

possession of the property and cultivate the same. In effect, therefore, the argument is that the challenged order was passed by the statutory

functionaries without jurisdiction. Mr. Raghavan, appearing for the trust, says that this aspect touching upon jurisdiction was not argued in the

manner it is sought to be done, either before the statutory authorities or before the writ Judge. He would, therefore, say that this contention is not open to the appellant. Even otherwise, he would sustain the order of Mohan, J., on the ground that Section 14-A is one of the sections which could be invoked by the statutory authorities for purposes of dispossessing a person actually in possession of trust lands, though he cannot be a tenant, a lessee of a cultivating tenant.

3. Arguments regarding the question of jurisdiction if it goes to the root of the matter and if it shakes its foundation can be addressed even at the appellate stage. If ultimately it is found that the order challenged under Article 226 of the Constitution of India is one passed by an authority functioning under a statute or otherwise who did not have the necessary or requisite power to pass it, then, the form of it ought not to prevail but the substance of the contention is a feature which highlights the position. Once it is found, as was found by Mohan, J., that the petitioner is not cultivating the lands and he is in fact an interloper, as he characterised him, then, the question is whether the second or the third respondent could intervene and direct the person in occupation of the land belonging to the trust to restore the lands in favour of the trust. Admittedly there is no demise of the lands in favour of the writ petitioner. The writ petitioner is only the brother of the original lessee. He came into occupation mainly because he rested his right presumably on filial relationship. But in the course of the investigation by the concerned officials it was found that he was not in actual possession but one Subramaniam was cultivating the property. It is alleged that Subramaniam is a relation. But so far as the trust is concerned, he is a stranger and he has, therefore, no locus standi to cultivate the land or be in possession of the same. If these are the admitted circumstances which halo the situation, the question is whether there are any provisions in the Tamil Nadu Public Trust Act, 1961, which would enable either the second or the third respondent to pass the challenged order as they did.

4. The learned Judge himself felt a doubt about it. He would in effect say that, in the circumstances as above, the authorities are not powerless to direct restoration of the possession of the lands to the trust from a person who is neither a lessee nor one who could be said to be in juridical

possession of the land. He would invoke Section 14-A. Section 14-A deals with special powers of the authorised officer and is a non obstante

section. It provides for suo motu power concurrently with the power to interfere on applications made by an aggrieved persons. The enquiry

contemplated u/s 14-A has to be for the reasons set out therein. If the authorised officer is satisfied that the public trust has failed to lease out the

land in accordance with the provisions of the Act or any lease by the public trust is not bona fide or any direction given by him under Clause (b) of

Section 12 or Clause (b) of Sub-section (2) of Section 13 or Sub-section (1) or Sub-section (2) of Section 14 has not been complied with, he

may pass an order directing the trustee to lease out the land within the prescribed period. We are unable to see any limb of this section as being

invocable or applicable to the situation under consideration. Sub-section (2) of Section 14-A again deals with tenants or cultivating tenants. The

entire vein which runs through the special power of the authorised officer speaks of a jural relationship of landlord and tenant as between the trust

and the person in possession. In the absence of such a relationship, either contractual or otherwise, then the authorised officer has no power u/s

14-A or under any other provisions of Act to interfere and take upon himself the responsibility of directing a person in possession of the property

of the trust to restore the same in, favour of the trust. Factually, therefore, this would be an order of eviction as against the person in occupation. It

may be that the statutory authorities have such a power to dispossess a person in possession provided the person sought to be dispossessed is

either a lessee or a tenant or a cultivating tenant. But in the instant case the person in occupation is an interloper or an intermeddler who has no

authority to be in possession of the land. The question, therefore, is whether Section 14-A or any other provision of the Act would help the

statutory authorities to direct the person in such occupation to restore the land in his occupation to the trust concerned. We searched in vain for

such a power and even the learned Counsel was not able to just point out to us any power either expressly provided for or by necessary

implication to be gathered from the provisions of the Act. We are unable to agree with the generic observation made by Mohan, J., that the

authorities are not powerless to direct restoration of the possession of the trust property from a person who does not satisfy the tests which would

badge him with the status of a tenant or a cultivating tenant or a lessee under the provisions of the Act. Whilst, therefore, accepting the finding of

Mohan, J., that the petitioner is not cultivating the property but only one Subramaniam, and as the order challenged herein in effect would be as

against the said Subramaniam to restore the lands in his possession in favour of the trust and as Subramaniam is a third person-stranger against

whom no proceedings can be initiated by the statutory functionaries under the Act, under one or the other provisions thereto, we hold that the

orders of the second respondent in the first instance and the third respondent on appeal are without jurisdiction. No doubt, this question has been

raised before us clearly. It cannot be said that it was not raised at all before Mohan, J., as the learned Judge himself found, as a fact, that the

authorities are not powerless to direct restoration and that Section 14-A is the provision which would come to the rescue of the statutory

authorities. We are unable to agree with Mr. Raghavan that the contention of jurisdiction cannot be raised in this Court for the first time.

5. The other questions do not necessarily arise in view of our conclusion that the challenged order is without jurisdiction. The writ appeal is allowed

and therefore, the writ of certiorari as prayed for shall issue and it is open to the public trust to take such action as is available to them in law as

against the person in actual possession. We are not allowing any costs in the writ appeal and we, therefore, set aside the order regarding payment

of costs made by the learned single Judge in the writ petition.