

(1963) 11 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No's. 914, 1158 to 1167, 1202 and 1203 of 1960

N.N. Ramanatha Ayyar and Others

APPELLANT

Vs

Pannaikara Moopan and Others

RESPONDENT

Date of Decision : 11-11-1963

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)
Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956 — Section 4A
Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 13, 2, 3, 4(1), 4(2)
Tanjore Tenants and Pannaiyals Protection Act, 1952 — Ordinance 5, Ordinance 6

Citation : (1964) ILR (Mad) 173

Hon'ble Judges : Sririvivasan, J

Bench : Single Bench

Advocate : K.K. Venugopal, for the Appellant; K.V. Sankaran, General and V.K. Thiruvengkatachari and V. Ramaswami, Additional Government Pleader, for the Respondent

Judgement

Srinivasan, J.—In these several writ petitions, the validity of the Madras Act XXXVI of 1958-the Tiruchirappally Kaiaeruvaram and

Mattuvaram Act -in its entirety has been questioned. The facts as they appear relevant for the different petitions would be set out later. Broadly

stated, these petitions are landowners who come within the mischief of this Act. The Respondents were persons employed as Kaiaeruvaramdars.

They moved the Special Tahsildar complaining that their service as Kaiaeruvaramdars has been terminated and sought for reinstatement as provided

by Section 5 of the abovesaid Act. Such reinstatement had been ordered and the complaint of the several landowners is that the provisions of the

Act offend the guarantees conferred by the Constitution and are liable to be struck down for that reason. Before setting out in detail the specific

contentions urged in this regard, it is desirable to refer to the circumstances under which this Act came to be passed and the provisions thereof.

2. The institution of Kaiaeruvaramdars appears to be peculiar to this district of Tiruchirappalli. In the Gazetteer of Tiruchirappalli, volume I, at page

150 the following passage explains the system:

Under the waram system, the landowner generally supplies the manure and seed and the lessee gets a share of the harvest which varies from one

half in the uplands to two-thirds in parts of Kulitalai. In the uplands, the straw always goes to the landlord. In the lowlands, the landowner often lets

his pannaiyals to cultivate part of his land. Considerable differences of practice occur. But the most common systems are what are called (1) the

Alwaram or Pannaiyal and (2) the Mattuvaram system. In the former the pannaiyal gets from one-fourth to one-tenth of the produce, the general

proportion amounting to 5/48ths of the whole, or 1-1/4 marakkals in every kalam. The Mattuvaram cultivator gets a larger proportion of the

produce generally 3/16ths and over the whole or part of the straw, But though the landlord supplies seed and manure, he has to find his own Oxon

for ploughing. The pannaiyals are engaged by the year and given a fixed rate of daily wages (usually paid in grain) and certain customary

presents.... They have to do any work which their masters require at any time....

3. It is seen from this passage that two sets of agricultural labourers are usually employed; both are generally paid by a share in the produce. The

Mattuvaramdars produce their own Oxen for the purpose of ploughing the land, besides attending to other duties upon the land. The

Kaiaeruvaramdars, on the other hand, have no bulls of their own. They have to attend to the ploughing, weeding and other operations upon the land just

as a Mattuvaramdars has to do, the only difference between the two being that the Kaiaeruvaramdars uses the bulls provided by the landowner. But

in either case the general practice in this district appears to have been that they have been remunerated by way of a share in the produce of the

land.

4. The question arose whether Mattuvaramdars and Kaiaeruvaramdars were cultivating tenants within the meaning of Act XXV of 1955. In certain

writ petitions that came before this Court, RAJAGOPALA AYYANGAR, J., held that they were not cultivating tenants, the principal grounds for

the decision being that these persons had no possession or custody of the land and had no tenancy agreement with the landlord and had not also

taken part in the entire cultivation but only one part of it. Nor were they paying any rent to the landlord, but, on the other hand, were paid a certain

quantity of grain. This decision went up in appeal and a Bench of this Court held in *Vaiyapuri v. Sethurama* ILR (1958) Mad. 1073 that

Mattuvaramdhar or a Kaiaeruvaramdhar is not a cultivating tenant as defined in the Madras Cultivating Tenants Protection Act. After this decision

was rendered an ordinance, Ordinance I of 1958, was promulgated. By this ordinance, the Madras Cultivating Tenants Protection Act, 1955, and

the Madras Cultivating Tenants Payment of Fair Rent Act, 1956, were amended. It provided that a cultivating tenant defined in the above two

Acts shall include

in the district Tiruchirappalli a Kaiaeruvaramdhar or Mattuvaramdhar who works on the land under an engagement with the landlord for remuneration

by a share in the crop in respect of which the work is done.

5. A new section, Section 4A in Act XXIV of 1956, was also inserted introducing a deeming provision that a Kaiaeruvaramdhar or

Mattuvaramdhar in the district of Tiruchirappalli in receipt of remuneration by a share in the crop shall, be deemed to be a cultivating tenant in

respect of that land. It is common ground that a bill was sought to be introduced in replacement of this ordinance, but that was dropped. But,

instead, a special Act, now impugned, Act XXXVI of 1958, was passed.

The long title to this Act describes it as an Act to

define the conditions of engagement and to provide for the protection of Kaiaeruvaramdars and Mattuvaramdars in certain areas in the district of

Tiruchirappalli.

6. The preamble to the Act sets out that certain peculiar kinds of relationship in respect of land called Kaiaeruvaram and Mattuvaram are

prevailing and

whereas the uncertainty regarding the incidence of those relationships have led to frequent disputes between the landowners and Kaiaeruvaramdars

and Mattuvaramdars leading to unsettled conditions and breaches of peace and causing fall in agricultural production.

7. The Act purported to define the conditions of engagement and to provide for the protection of Kaiaeruwaramdars and Mattuwaramdars.

Section 2 of the Act defines Kaiaeruwaramdars and Mattuwaramdars. I have earlier pointed out the distinctions between the two and the

definitions follow those distinctions. Section 3 of the Act specifies that the remuneration payable to any Kaiaeruwaramdar shall be on the same

terms as were applicable to him immediately before the commencement of this Act. Section 4, Sub-Section 1, interdicted the dismissal of a

Kaiaeruwaramdar by the landowner after the commencement of the agricultural operations in a crop season. Sub-Section 2 enabled the dismissal

for misconduct or for neglect of duty. But the landowner dismissing a Kaiaeruwaramdar was bound to report the dismissal to the Tahsildar having

jurisdiction over the area. Sub-Section 3 provided for termination of the engagement by mutual agreement, or by giving notice in writing. But in

such an event the landowner was liable to pay to the Kaiaeruwaramdar such compensation as may be prescribed or such amount as may be

agreed upon.

Since a great deal of the argument in this case has centred round Section 5 of the Act, it may be set out in extenso:

Kaiaeruwaramdar to be re-engaged in certain cases.-Any Kaiaeruwaramdar whose engagement has been terminated on or after the 1st January,

1957, and before the commencement of this Act, shall, on application made within thirty days after the commencement of this Act, to the Tahsildar

having jurisdiction over the area in which the land is situated, be entitled to be re-engaged as kaiaeruwaramdar under this Act by the landowner

concerned,

8. There are two provisos thereto which are not important. The further sections in the Act provide for adjudication of disputes arising out of a

dismissal u/s 4(2) of the Act.

9. Mr. K.K. Venugopal, for the Petitioners, has argued that the Special Tahsildar who heard the matter and made the orders which have led to the

present writ petitions had no territorial jurisdiction. I can dispose of this point first before taking up the principal question as to the

unconstitutionality of the impugned provisions of the Act. According to the learned Counsel, Section 4(2), which calls upon the landowner, on

dismissing a kaiaeruwaramdar for misconduct or for neglect of duty, to report the fact of dismissal, refers to the authority to whom the report has

to be made as the Tahsildar having jurisdiction over the area. The very same expression is used again in Section 5 as the authority to whom any

kaiaeruwaramdar whose engagement has been terminated could apply for re engagement It is that authority so described who is empowered to

adjudicate the disputes between the parties. The explanation to Section 6 also states that where the land in respect of which the kaiaeruwaramdar

is engaged is situated in the jurisdiction of more, than one Tahsildar, it shall be open to the party aggrieved to apply to any of those Tahsildars. Mr.

Venugopal contends that the Act purports to empower an existing authority described as the Tahsildar having jurisdiction over the area as the

appropriate authority who has jurisdiction to deal with the matter referred to. It is contended by the learned Counsel that the Act confers no power

upon the Government to appoint any other authority, whether called a Special Tahsildar with jurisdiction under the impugned Act over the area in

question or in any other manner. In the rules framed under this Act, Tahsildar has been defined to mean

Tahsildar in whose jurisdiction the holding in question or any part thereof is situate, or any officer of the Revenue Department not below the rank of

a Tahsildar specially empowered by the Government, or other competent officer in this behalf.

10. The rules have been framed u/s 13 of the Act, which empowers the Government to make rules to carry out the purposes of the Act. The

contention of the learned Counsel however is that in so far as the provision of the Act itself describes the authority as the Tahsildar having

jurisdiction over the area, it is not competent to the Government to frame a rule to include any authority other than the one mentioned in the section.

It is true that a Tahsildar is a revenue officer possessing certain powers in relation to any specified area. It has not however been contended by the

learned Counsel that by the expression Tahsildar is meant an authority who has been empowered by any relevant statute to exercise any general or

special jurisdiction. If a Tahsildar so-called derived his powers under any statute which empowered a Tahsildar as such to exercise any jurisdiction

in or over any particular area, there would perhaps be some validity in the contention that a specific authority alone was described by the

expression Tahsildar having jurisdiction over the area. In the absence of any such feature no statute which recognises a Tahsildar as a defined

authority has been placed before me or has been brought to my notice the expression has to be given its normal connotation. That should

accordingly be taken to indicate a person appointed as a Tahsildar and conferred with jurisdiction over an area for the purpose of the provisions of

this Act. I am also not persuaded to agree with the learned Counsel that by defining Tahsildar in this particular manner in the rules, Government

have assumed a power which was not conferred upon them by Section 13 of the Act. Section 13 contains, to my mind, an implied power on the

part of the Government to appoint a Tahsildar for the purposes of this Act over any area.

11. The constitutional objection raised can be briefly stated to be that Section 5 of the Act is unworkable in a variety of conditions and

circumstances and that it also offends Article 19(f) of the Constitution. Mr. Venugopal argues that this provision gives a right to a discharged

kaiaeruwaramdar, discharged on or after the 1st January, 1957, and before the commencement of the impugned Act, to seek re engagement He

argues that during this period not less than five crop seasons have intervened and it is impossible to give effect to this provision, if there should be a

large number of persons who happened to be engaged during that period and should have been discharged on various dates within that period. He

also contends that a person who has been employed as a casual labourer for a particular work or for a specified period naturally ceases to be

employed at the end of that period or after the work is over and his service cannot be said to be terminated within the meaning of Section 5. He

also claims that this section cannot possibly be worked in the case of persons whose services are terminated by mutual agreement or by the giving

of notice and the payment of compensation provided for by Section 4(3) of the Act. Another conundrum raised by the learned Counsel is whether

the right to re-engagement would accrue to a kaiaeruwaramdar who was dismissed for misconduct or neglect of duty during the period in question.

Amplifying these arguments, Mr. Venugopal points out that if more than one person should seek employment by resort to Section 5, the section

could not possibly be worked, and the absence of any provision in the Act to meet situations of this kind is itself relied upon by the learned

Counsel to impeach its validity. A further argument is, what is to happen in the event of the landowner parting with his rights in the land or the land

becoming subject to division among the several different persons? Learned Counsel asks how in such an event the discharged kaiaeruwaramdars

could be restored or which of the several owners would be compelled to so employ them.

12. It seems to me that these considerations are hardly relevant to an examination of the validity of the provision. As the learned Advocate-General

points out, one can always imagine a variety of situations where even the most carefully drafted statutes may come in for criticism as unworkable in

a particular state of things. That that should not be the approach is well illustrated by a decision of the Privy Council in *Pye v. Minister for lands for*

New South Wales (1954) 1 W.L.R. 1410 (P.C). This part of the headnote would sufficiently indicate the view of the Privy-Council:

The fact that under the Act the compensation was to be determined by the Advisory Board in its report before the purpose of resumption was

finally determined by the Governor and confirmed by the Parliament, while technically presenting some difficulty, involved no actual difficulty in

practice and did not render the Act unworkable. In the present case, the Advisory Board obviously knew of the intention of the Minister and

assessed the compensation accordingly, and the requisite steps prescribed by the Act were taken in due course. There was no justification for the

view that the Advisory Board could not know the purpose of the resumption until it had finally been effected.... The objection was theoretical only,

for in fact the Advisory Board do, and, in the present case did know both the purpose of the resumption and the owners concerned.

13. In the course of that judgment it was also observed:

In reaching the conclusion as to the meaning to be placed upon an Act of Parliament, it must always be remembered, as LORD DUNEDIN said in

Murray v. Inland Revenue Commissioners (1918) A.C. 541: "" It is our duty to make what we can of statutes, knowing that they are meant to be

operative, and not inapt, and nothing short of impossibility should, in my judgment, allow a Judge to declare a statute unworkable."" A similar view

was expressed by LORD SIMON, L.C. in *Nokes v. Doncaster Amalgamated Collieries Limited* (1940) A.C. 1014 in the words:

If the choice is between two interpretations, the narrower of which should fail to achieve the manifest purpose of the legislation, we should avoid a

construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would

legislate only for the purpose of bringing about an effective result.

14. Whether or not any particular discharged employee would be entitled to be restored, or which or more than one discharge employee would be

entitled to be re-engaged, would certainly be a question that would call for determination in the course of a proceeding u/s 5 or 6 of the Act. The

mere circumstance that there may be such proceedings and that persons claiming equal rights may demand re-engagement as the kaiaeruwaramdar

of the same landowner may no doubt cause some difficulty in the actual adjudication of the disputes. It is the adjudicating authority whose judicial

determination that would settle that question. But I can see no ground for holding that the mere likelihood of such disputes and the difficulty which

the authority competent to adjudicate upon those disputes might face are sufficient to say that the scheme contained in Sections 5 and 6 is

completely unworkable.

15. Proceeding further on the same lines, Mr. K.K. Venugopal argues that in cases where the landowner changes the crop upon the land and

cultivates sugar-cane for instance, instead of paddy, in what manner is the kaiaeruwaramdar to be remunerated? According to the learned Counsel,

while there is a custom with regard to the sharing of produce in respect of lands cultivated with paddy, no such custom exists in the case of any

other crop. In the case of sugarcane cultivation, it is, also claimed that there is no ploughing of the land in the absence of which the engagement of a

kaiaeruwaramdar is, according to the learned Counsel pointless. He also argues that any landowner has a right to let his land lie fallow, and if the

land is left fallow, neither ploughing nor watering operations require to be done. In such, a case, what are the rights and liabilities of the

kaiaeruwaramdar and the landowner? It is urged that if a kaiaeruwaramdar is deemed to have been permanently engaged, the landowner has to

suffer uncompensated liabilities and, what is more important, from the point of view of the arguments advanced, is that learned Counsel asserts that

the Act contains no method by which disputes of that nature can possibly be

adjudicated upon, and that is relied upon in support of the contention that the Act is in various aspects of the relationship between, the kaiaeruwaremdar and the landowner distinctly unworkable.

16. Though there appears to be some measure of substance in these arguments, I am not satisfied that a close scrutiny of the provisions of the Act leads to the conclusion that the Act is unworkable in certain situations. A kaiaeruwaremdar is defined to be a person engaged by a landowner to do ploughing and watering operations or ploughing operations alone, the remuneration for such work being by a share in the crop on the land in respect of which such work is done, or by payment of a fixed quantity of paddy, or by both such share and payment. As the definition stands, it has certainly no relation to the particular crop that is raised upon the land. Whether it is paddy crop or not, it makes no difference to the terms of engagement between the parties. If it is a fact that a kaiaeruwaremdar is not under the custom prevalent entitled to a share in any crop other than paddy, it may be that he cannot claim a share in sugarcane crop, for instance. But, nevertheless, for the work that he does on the land, he is entitled to be paid the quantity of paddy stipulated between the parties. I am unable to accept the plea that no ploughing is required in respect of land on which sugarcane is raised. There is undoubtedly the need for the initial ploughing, and the subsequent tending of the crop would call for periodical watering operations. Cases will differ according as the kaiaeruwaremdar is engaged only for ploughing operation or for both ploughing and watering operations, in which event the remuneration will probably differ. But that is not to say that the provisions in the Act became unworkable.

Nor do I see any difficulty in dealing with a situation where the landowner prefers to let the land lie fallow. It virtually amounts to terminating the service of the kaiaeruwaremdar. Section 4, Sub-Section 3, provides for such a course. It may no doubt involve the landholder in paying compensation for such termination. Equally, on the landowner ceasing to be the owner, the rights and liabilities of the parties would appear to stand transferred to the successor in interest of the landowner, for land owner in relation to a kaiaeruwaremdar has been defined to mean the owner of the land who has engaged a kaiaeruwaremdar and to include any person deriving any right from such owner in respect of that land. The scheme of

the Act is that a kaiaeruwaramdar is associated with the land for the cultivation of which his services have been engaged, and that being so, parting

with, the land or ceasing to own a land may relieve the previous owner from any obligation in that regard; but that obligation being attached to the

land as it were, will be one that will have to be discharged by the person who succeeds to the interest of the owner.

17. The argument that she matters as the above are not adjudicable under the Act is one which I am unable to accept. No provision of the Act can

to my mind be struck down as being unworkable.

18. u/s 7 of the Act, certain larger privileges appear to have been accorded to mattuwaramdars. A mattuwaramdar is a person who supplies bulls

for ploughing operations for the landowner, and does ploughing and other operations on the land, whereas a kaiaeruwaramdar does not supply

bulls but duly ploughs the land with the bulls provided by the landowner and does ploughing alone or ploughing and watering operations. In the

case of a mattuwaramdar, Section 7 of the Act has given, him the status of a cultivating tenant within the meaning of the Madras Cultivating Tenants

Protection Act, 1955, and the Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956. These are other provisions which provides for the

re-engagement of a mattuwaramdar, whose engagement has been terminated on or before the 1st of January, 1957, and before the

commencement of the impugned Act, provisions analogous to those contained in Section 5 of the Act. It may be mentioned that a

kaiaeruwaramdar has not been given the privilege of a cultivating tenant Mr. K.K. Venugopal argues that both the mattuwaramdar and

kaiaeruwaramdar do the same or similar kind of work on the land, but while the mattuwaramdar has been, granted the rights of a cultivating tenant,

the kaiaeruwaramdar has been treated differently. According to him, the differential treatment accorded to two classes of persons has no

reasonable relation to the object of the Act, and on this ground, the validity of the Act itself is challenged.

19. I am not disposed to agree with this contention. The statute did not bring into existence the two classes of persons. The system of

mattuwaremdars and kaiaeruwaramdars appears to be an ancient one and what the statute purports to do is only to confer a certain measure of

security in what may be called the service conditions of these classes of cultivators. According to the preamble, the Act was intended to define the conditions of engagement and to provide for the protection of kaiaeruwaramdars and mattuwaramdars. The two classes of persons certainly do form recognisable groups distinct from each other, and if the ancient system, which also treated these two groups of persons, differently in so far as their rights to remuneration was concerned was given statutory shape by his Act, it cannot be contended that there being no real difference between the nature of the services rendered by the two classes of persons, the conferment of larger rights upon the one by the Act than upon other invites the taint of discrimination. The case of Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, has been referred to in this case.

The principles which would justify a classification when the constitutionality of any particular enactment is attacked as discriminatory have been set out in this decision. It is argued that when there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, it is not open to the Court to presume that there must be some undisclosed and unknown reasons for subjecting certain individuals or classes to hostile or discriminating legislation. It is difficult to see any support to the present argument from the decision cited. As I have pointed out it is not a classification which has been attempted for the first time by the statute. It is one which has been in existence in the history of the agricultural economy in the district of Tiruchirappalli. There were two distinct classes of persons engaged for certain specified work in relation to cultivation of land, enjoying certain unwritten privileges but controlled by custom prevalent in the district. The Legislature did not attempt to discriminate one class against the other. It only recognised the fact that a mattuwaramdar was a person who was connected with the cultivation of land much more closely than a kaiaeruwaramdar, who could under certain conditions be nothing more than a casual employee, and if, recognising the customary higher rights always enjoyed by a mattuwaramdar, the Legislature also gave statutory expression to it in a particular form, it cannot be argued that there is discrimination in favour of the mattuwaramdar and against the kaiaeruwaramdar.

20. In this connection, I may refer to *Santhanakrishna v. Vaithilingam* ILR (1953) Mad. 1114, 1122, 1124. In that case, a sister enactment called the Tanjore Tenants and Pannayals Protection Ordinance IV of 1952, as modified by Ordinances V and VI of 1952 and the Tanjore Tenants and Pannayals Protection Act XIV of 1952 came under examination on the ground of attack of constitutional invalidity. In particular, certain new rights were conferred on cultivating tenants and pannayals, and the controversy related to those sections which conferred such new rights. Pannayals, that is, persons engaged by a landowner or by a cultivating tenant to look after a farm and do all cultivation work on the land whenever necessary in the course of an agricultural year, excluding casual labourers, could not be dismissed on and after the 1st of March 1952, and could be ordered to be taken back if the dismissal was not just and proper. These provisions were attacked as unconstitutional inasmuch as they contravened Article 19(1)(f) of the Constitution; a very similar ground has been taken in the present cases as well; A Bench of this Court examined the provisions and had to consider whether the restriction imposed upon the light guaranteed by Article 19(1)(f) was or was not in the interests of the general public. A large number of authorities was examined and their Lordships observed: A question of this kind has in general to be decided not on abstract principles, but on a consideration of the facts and circumstances which form the background of that legislation and therefore, not much assistance can be derived from decisions given on other statutes. and later, In judging of the reasonableness of an enactment, it will be useful to bear two principles in mind. One is that when once it is found that the object of the legislation and the means adopted to secure it are both reasonable, it is no objection to its validity that it incidentally confers rights on persons who are not in themselves intended to be the beneficiaries. And the other is that in deciding on the reasonableness of a statute which deals with several matters and enacts diverse provisions, the correct approach is not to take each provision by itself, pound it into its component parts and subject them to meticulous criticism, but to consider the scheme of the Act in its entirety and the cumulative effects of the provisions as a whole.

21. In that particular case, the learned Judges held that restrictions contained in

the Impugned sections as not unreasonable, having regard to their character as an emergency legislation of a temporary nature.

22. Whether it is a temporary legislation or a permanent one, the principles enunciated in the above passage equally apply. It cannot be contended that the impugned legislation lies outside the sphere of legislative competency of the State. The extent to which a particular class stands benefited in comparison with another distinguishable class cannot possibly form the basis of an attack-of discrimination. The Act itself was necessitated by reason of unhappy agrarian relationship between the owner of the land and the actual person engaged to till the soil and perform the cultivation operation thereon. If for the purpose of ensuring the safety of agricultural economy and for providing for employment and conditions of work, the Legislature had to intervene and provide for definite conditions of employment and remuneration, that is fully within the scope of the relevant entries in List 2 and List 3 of the VII Schedule. If the security for service tenure and conditions is called for, to safeguard against improper dismissals, restoration to service or compulsory re-engagement would certainly be measures ancillary to the main intention underlying the legislation. I can see no difference in principle between an industrial employer being under a disability to discharge an employee at his will and an agricultural employer being placed under the same limitation. The contention that an employer should not have, thrust upon him an employee whom he does not wish to entertain in service and that offends any guaranteed right under the Constitution is one which derive no support from any authority.

23. I am accordingly satisfied that the attack upon the provisions of the Act as being unworkable must fail; equally so, the attack upon the constitutionality of any particular provision therein. The writ petition will be posted for further hearing on the special points relevant to each individual application in due course.