

(1962) 09 MAD CK 0011

In the Madras High Court

Case No : Writ Petition No's. 685 to 691, etc., of 1960

P. Sathan and Others

APPELLANT

Vs

Valliammal Achi and Others

RESPONDENT

Date of Decision : 18-09-1962

Acts Referred:

Constitution of India, 1950 — Article 226
Madras Estates Land (Reduction of Rent) (Amendment) Act, 1956 — Section 3, 3A(2), 3 3A(3), 3 3A(4), 3(2)
Madras Estates Land (Reduction of Rent) (Amendment) Act, 1957 — Section 7
Madras Estates Land (Reduction of Rent) Act, 1947 — Section 7

Citation : (1963) ILR (Mad) 689

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : A. Sundaram Iyer and S.V. Jayaraman, for the Appellant; M. Natesan, P. Balasubramaniam and S. Mohan, for V. Ramaswami, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—The landholder of Sennalgudy village in Bamanathapuram district filed certain applications, of which these petitions are

concerned with only nine, u/s 3-A(2)(a) of the Madras Estates Land (Reduction of Rent) Amendment Act, 1956 (Madras Act XXIX of 1956),

before the second Respondent for a decision on the question whether the relative lands were ryoti in character. It may be remembered that

originally under the Madras Estates Land (Reduction of Rent) Act, 1947 (Act XXX of 1947), there was no provision for a forum or power to

determine that question. In order to cover this lacuna, Madras Act XXIX of 1956, was enacted providing for a forum and the procedure for

determining the nature of the land in an estate within the meaning of Madras Act

XXX of 1947, for purposes of determination of the reduced rent applicable to particular holdings. When these applications were taken up on February 16, 1959, on the ground of default of appearance of the Petitioner, they were dismissed. On March 13, 1959, applications were filed for restoration. These applications were allowed on August 26, 1959, and the original applications u/s 3-A were restored to file. These petitions are directed against the restoration orders.

2. The Petitioners, in this Court, who claim to be tenants, contend that the Collector had no power to restore the application once dismissed for default, and it is this question which falls to be determined in these petitions. Madras Act XXIX of 1956, came into operation in December 1956.

By Sub-Section 1 of Section 3-A, it is provided that notwithstanding anything contained in the Madras Estates Land Act, 1908, or any other law

for the time being in force, the question whether any land in a village is or is not ryoti land shall be determined by the Collector. Sub-Section 2(a) of

this section further provides that any person denying the character of any land in a village to be ryoti should file an application before the Collector

for determination of that question and Clause (b) of Sub-Section 2 provides for limitation for filing such an application, with a proviso giving power

to the Collector to extend the time within specified limits. Sub-Section 3 of Section 3-A lays down the procedure for the Collector in disposing of

application under Sub-Section 2. This Sub-section enjoins that after giving notice in the prescribed manner to the applicant and the Respondent

and to the person in occupation of the land, and after publishing the notice in the prescribed manner in the village and after giving the parties, who

appear before him, an opportunity to be heard and to adduce their evidence, the officer shall give his decision on the application. Sub-Section 4

provides for appeal to a Tribunal set up under the Act for the purpose against the orders of the Collector. The rest of the sections in Madras Act

XXIX of 1956, relate to the constitution of Tribunals, disposal of pending applications and modifications of orders made u/s 3(2), and certain other

matters. Madras Act XXIX of 1956, itself contains no rule-making power. But the purpose of this Act was to amend the Madras Act XXX of

1947, and incorporate or insert therein Section 3-A and the following sections. Under the amending Act, the rule-making power contained in

Section 7 of Madras Act XXX of 1947, should be taken to be available for purposes of carrying out the provisions of Madras Act XXIX of

1956, as well. Section 7 of Madras Act XXX of 1957, provides that the State Government may make rules to carry out the purposes of that Act.

In exercise of this power, the State Government framed rules relating to applications u/s 3-A and the disposal thereof, and these rules appear to

have come into force sometime in July 1957. The first four rules devote themselves to the form of the applications to be made u/s 3A(2)(a), and

the particulars they should contain, and the manner in which they should be given. Rule 5 is to the effect that such applications should be filed

before the Revenue Divisional Officer within whose jurisdiction the lands in question are situate. Under the same rule, this officer is to have all

powers of a Collector under Madras Act XXX of 1947. Rule 6 relates to the notice contemplated by Section 3-A(3), and among other things, by

Sub-clause 5 of this rule, the form of notice is prescribed. This form requires the hearing date to be specified and announces that all persons

interested are called upon to file before the officer concerned statements bearing on the question, adduce oral or documentary evidence as is

necessary and be present at the hearing. If the Appellant does not appear, the application will be dismissed. If any person interested, other than the

applicant, does not avail himself of the opportunity given to him by the officer, it would be open to him to dispose of the application on the merits,

and the person in default will have no further opportunity. But this applies only to a person other than the applicant.

3. The question is whether in the light of these provisions, it can be said that the Revenue Divisional Officer had the power to restore the

applications dismissed by him for default of appearance of the applicant. What Section 3A(3) contemplates is a decision on the merits after giving

an opportunity to the applicant and the other parties and the interested persons to be heard and to adduce their evidence. But whether an

application can be dismissed for default seems to be, therefore, doubtful. The power to make rule is only to carry out the purpose of the Act. The

purpose of Madras Act XXX of 1947, is obviously to apply the rent reduction notification to particular holdings, and in connection with that, it has

necessarily to decide whether the particular land covered by a given holding is or is not ryoti. Without settling that question, it will not be proper to

apply the rent reduction notification. It appears to me, therefore, that it will not be carrying out the objects of the Act to make a provision that the

application may be dismissed for default of appearance of the Petitioner, once an application has been made u/s 3A(2)(a).

4. In any case, I am inclined to think that having regard to the object of the Act, which is to apply the rent reduction notification to particular

holdings, the power incorporated in the form of the notice prescribed under the rules to dismiss an application for default carries with it also a

power to restore the application if proper cause therefore is shown. This interpretation of the power contained in the form of notice, as I think, will

also be in keeping with the object of the main as well as the amending acts.

5. No doubt, as a general proposition where under special enactments special forums are erected with enumerated powers with reference to stated

subjects, such a forum is controlled by and should act within the four corners of the powers granted to them. It is in the light of such a rule that

questions have arisen in this Court, whether a Tribunal or officer clothed with quasi-judicial power, when it passes an ex parte order, is competent

to set it aside when cause is shown for the purpose. One such case is N.K. Segu Abdul Khadir Hadjar Vs. A.K. Murthy, which related to the

Madras Buildings (Lease and Rent Control) Act. But whether there is power to set aside an ex parte order, or make an order of restoration of an

application dismissed for default will depend upon particular terms of the statute or the rules framed thereunder. What applies to a given statute or

rules need not necessarily apply to situations arising under different enactments. My conclusion, that the form of notice when it provided a power to

dismiss an application for default of appearance implied in that power the competence to restore the application for proper cause, is not merely

grounded on the language of the prescribed notice, but it is also the object of the provisions of Madras Act XXX of 1947 as well as of Madras

Act XXIX of 1956.

6. Sri A. Sundaram Iyer urged that inasmuch as Sub-Section 4 of Section 3-A provides for appeal from the order of the Collector, this Court

should not interfere under Article 226 of the Constitution with the restoration orders. The answer is twofold. As I said, it is doubtful whether Sub-

Section 3 of Section 3A enables the Collector to dismiss an application for default

of appearance of the applicant. Also it rather appears, having regard to the particular language used by Section 3 that the object of the original and amending Act is that the decision contemplated by the Sub-section should be one on the merits. But, it is not necessary to rest my decision on this point. Even assuming that an appeal lay, Sub-Section 4 prescribed a period of limitation for filing an appeal, and since appeal time has long since expired, the point loses its force that the landholder could prefer an appeal. When the applications were restored, it were the alleged tenants who were aggrieved, and there was no reason why the landholder was called upon to file appeals.

7. The petitions fail and are dismissed, but in the circumstances with no order as to costs.