

(1979) 09 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No. 7430 of 1975

Periathambi Goundan

APPELLANT

Vs

The District Revenue Officer, Coimbatore and Others

RESPONDENT

Date of Decision : 27-09-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 — Section 16, 3(2)

Citation : AIR 1980 Mad 180 : (1980) ILR (Mad) 255 : (1980) 93 LW 169

Hon'ble Judges : Ramaprasada Rao, J;Ramanujam, J;Ismail, J

Bench : Full Bench

Advocate : T.R. Ramachandran, for N. Varadaraian, T.R. Rajagopalan and T.R. Rajaram, for the Appellant; Addl. Govt. Pleader, M.R. Narayanaswami, for R. Krishnamurthi, V. Natarajan, D. Raju and A.R. Lakshmanan, for the Respondent

Judgement

Ismail, J.—This petition has been filed under Art. 226 of the Constitution of India, praying for the issue of a writ of certiorari or any other

appropriate writ order or direction calling for the records in B. P. No. 7 of 1975, on the file of the first respondent herein, namely, the District

Revenue Officer, Coimbatore, and quash the order dated 22-11-75. One of the questions involved in this writ petition is the scope and effect of S.

16-A of the Tamil Nadu Agricultural Land Record of Tenancy Rights Act, 1960 (Tamilnadu Act X of 1960) hereinafter referred to as the Act;

introduced by the Tamilnadu Agricultural Land Record of Tenancy Rights (Amendment) Act 1972 (Tamil Nadu Act 84 of 1972) with effect from

27-11-1972.

2. When the writ petition came up for hearing before our learned brother, Mohan J., the learned Judge held that two important questions of law

came up for consideration, apart from the merits of the case, namely

(1) ""What is the scope and extent of the revenue authority constituted under the Act?

(2) What is the interpretation to be placed on the decision reported in Muniandi v. Rajangam Iyer 1976 1 Mad LJ 344?""According to the learned

judge, the interpretation of the section in Muniyandi v. Rajangam Iyer 1976 1Mad LJ344: AIR 976Mad287 referred to above did not seem to be

warranted, having regard to the decision of this court in Sankaralinga Thevar v. Thirumalammal, 1977 1Mad LJ189. Having regard to the

importance of the two questions and since the questions a likely to rise in very many cases, the learned learned Judge considered matter that this is

a fit matter to be decided by a Division Bench of this court. When the matter came up before a Division Bench, the Bench felt that there was an

apparent conflict of opinion as between the above two decisions of the two Division Benches and hence the matter was directed to be placed

before a larger Bench and that is bow the matter has come before us.

3. We shall now briefly refer to the facts of the case which have given rise to the present writ petition. The matter relates to an extent of 3.76 acres

in S. No. 537/A of South Boothinatham Village, Udumalpet taluk, Counbatore Dt. The petitioner in the writ petition on 18-1-1972 applied under

the provisions of the Act to the third respondent herein, namely, the Record Officer, for registration of his name as the tenant. The third respondent

recorded the name of the petitioner on 10-4-72, as the tenant in respect of the lands in question and the draft record was published on 27-4-1972.

In June 1972, respondents 4 and 5 preferred applications under Sec. 3 (13) of the Act seeking the deletion of the petitioner's name from the draft

record. The contention of the 4th respondent was that he was the owner of the lands, that he was personally cultivating the lands and that there

were no tenants on the lands. The contention of the 5th respondent was that he was the tenant in respect of the above lands and that the

petitioner's name should be removed from the record of tenancy rights and his name should be substituted as the tenant in respect of the lands in

question. On 27-12-72, the 3rd respondent therein rejected the applications of respondents 4 and 5 and confirmed the entry of the petitioner

herein as the tenant in respect of the lands in question. Against the said order of

the 3rd respondent dated 27-12-1972, respondents 4 and 5 preferred an appeal to the 2nd respondent herein, who is the appellate authority under the Act. Since some fresh evidence was tendered before the appellate authority mid both the parties wanted to examine witnesses to prove their respective cases, the appellate authority remanded the matter to the 3rd respondent for fresh disposal. After the matter was remanded, the 3rd respondent enquired into the matter afresh and by his order dated 30-11-1974, deleted the name of the petitioner and directed the substitution of the name of the 5th respondent as the tenant in respect of the lands in question. Against this order of the 3rd respondent, the petitioner herein preferred an appeal to the 2nd respondent and the second respondent by his order dated 31-3-1975, allowed the appeal and registered the name of the petitioner herein as the tenant in respect of the lands in question. The fifth respondent herein preferred a revision petition to the first respondent here in against the order of the second respondent, and the first respondent allowed the revision petition, deleted the name of the petitioner herein and restored the order of the third respondent registering the name of the fifth respondent herein as the tenant in respect of the lands in question. It is to quash this order that the present writ petition has been filed.

4. Before we refer to the principal grounds on which the writ of certiorari as been prayed for, it is necessary to refer to certain proceedings instituted by the parties: in the Civil Court. The 4th respondent here in instituted O. S. No. 250 of 1972 on the file of the Court of the District Munsif, Udumalpet, for a permanent injunction restraining the petitioner here in from interfering with his possession of the lands in question. That suit was instituted on 15-4-1972. On 19-4-1973, the suit was dismissed for default. Though the suit was restored at the instance of the 4th respondent twice, each time the suit was again dismissed for default, that is, on 2-8-1974 and 4-11-1975 respectively. The said dismissal became final, as no further steps were taken against the final order of dismissal.

5. The 5th respondent in his turn filed O. S. 296 of 1972, on the file of the court of the District Munsif, Udumalpet, praying for a declaration that he is a cultivating tenant and for a permanent injunction restraining both the petitioner as well as the .4th respondent herein from interfering with his

possession. That suit was instituted on 3-5-1972 and the same was dismissed for default on 18-4-1973. The 5th respondent filed an application, I.

A. No. 737 of 1973, for setting aside the order of dismissal and for restoration of the suit to its file, but that application was" dismissed on 6-7-

1974. Against the "said order of dismissal of I. A. 7.37 of 1973, the 5th respondent preferred an appeal, C. M. A. 26 of 1974, on the file of the

court of the Subordinate judge, Udumalpet, and the said appeal was dismissed on 23-12-1974. The matter was taken up further by way of

revision to this court in C. R. P. 718 of 1973, but this court dismissed the civil revision petition on 15-9-1978. Thus, the dismissal for default of O.

S. No. 296 of 1972 also became final.

6. The petitioner herein filed O. S. No. 261 of 1973 on the file of the court of the District Munsif, Udumalpet, for a permanent injunction

restraining respondents 4 and 5 herein from interfering with his possession of the lands in question. The petitioner herein claimed to be in

possession of the lands in question as a cultivating tenant under the 4th respondent. The suit was decreed ex parte on 14-10-1974. Respondents 4

and 5 filed I. As. 1166 and 1243 of 1974 respectively to set aside the ex parte decree, but both the applications were dismissed on 28-6-1975.

The 5th respondent preferred an appeal. C. M. A. 18 of 1975, on the file of the court of the Subordinate judge, Udumalpet, against the dismissal

of I. A. 1243 of 1974, but that appeal ,was dismissed on 19-8-1975. The fifth respondent here in brought up the matter further by way of revision

to this court in C. R. P. 2744 of 1975 and that petition* also was dismissed on 5-11-1975. The 4th respondent in his turn filed C. M. A. 24 of

1975 on the file of the court of the Subordinate judge, Udumalpet, against the dismissal of I. A. No. 1166 of 1974 and that appeal was dismissed

on 17-11-1975 and the matter was not taken up further.

7. Thus it will be seen that the ex parte decree by way of grant of permanent injunction passed in O. S. No. 261 of 1973 in favour of the petitioner

herein against respondents 4 and 5 herein also became final. It will also be seen that those proceedings in the Civil Court had taken place before

the first respondent herein passed the impugned order on 22-11-1975.

8. It is against the background of these facts that the learned counsel for the petitioner put forward principally two contentions - one relating to the

scope of S. 16-A of the Act and the other on the merits of the order dated 22-11-1975 of the first respondent.

9. Regarding the scope of S. 16-A of the Act, the contention is that the authorities functioning under the Act have no jurisdiction to decide as to

who is the tenant in respect of the lands in question, as between two rival claimants, and that S. 16-A of the Act does not bar a civil Court from deciding that controversy.

10. The challenge to the order dated 22-11-1975 of the first respondent, on merits, is that the first respondent herein had not at all considered the

effect of the ex parte decree passed in O. S. 361 of 1973 on the file of the court of the District Munsif, Udumalpet, granting an injunction in favour

of the petitioner herein against respondents 4 and 5, which will have the effect of the civil Court holding that it was the petitioner, who was in

possession of the lands in question on the date of the institution of O. S. 261 of 1973 and that fact will have a definite bearing on the controversy

as to whether it was the petitioner or the 5th respondent, who was the tenant of the land in question.

11. It is these two points that we propose to consider now. As a preliminary to this, we shall refer to the important features of the Act. The Act

was passed to provide for the preparation and maintenance of record of tenancy rights in respect of agricultural lands in the State of Tamil Nadu.

Sec. 2 defines several expressions occurring in the Act. Sec; 2 (3) defines the expression "intermediary. Section 2 (5) defines the expression

"landowner". Sec. 2 (7) defines the expression *record officer. Sec. 2 (8) as amended by Tamil Nadu Act 26 of 1975, reads as follows -

2 (8) (i) "tenant" in respect of any area in the State (other than the Kanyakumari district) - (a) means in relation to any land to which the Tamil

Nadu Cultivating Tenants Protection Act 1955 (Tamil Nadu Act XXV of 1955) applied a cultivating tenant as defined in clause (aa) of S. 2 of that

Act and includes-

(i) a mattuperamdar referred to in clause (a) or clause (b) of S. 7 of the Tiruchirapalli Kalaieruvaram and Mattuvarain Act, 1958 (Tamil Nadu Act

XXXVI of 1958); and

(ii) a possessory mortgagor, who, under a tenancy agreement, express or implied, with the possessory mortgagee contributes his own physical

labour or that of any member of his family in the cultivation of the lands subject to possessory mortgage, and

(b) means in relation to any land to which the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Land) Act 1961 (Tamil Nadu

LVII of 1961) applies a cultivating tenant as defined in clause (5) of S. 2 of that Act;

(ii) "tenant" in respect of any area in the Kanyakumari District

(a) in relation to any land other than the land to which the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961

(Tamil Nadu Act LVII of 1961) applies

(i) means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another,

under a tenancy agreement, express or implied; and

(ii) includes -

(a) any such person who continues in possession of the land after the determination of the tenancy agreement;

(b) the heir of such person, if the heir contributes; his own physical labour or that of any, member of his family in the cultivation of such land;

(c) a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land; or

(d) any such sub-tenant who continues In possession of the land notwithstanding that the person who sublet the land to such sub-tenant ceases to

have the right to possession of such land;

(e) a possessory mortgagor who, under a tenancy agreement, express or implied, with the possessory mortgagee, contributes his own physical

labour or that of any member of his family in the cultivation of the land subject to possessory mortgage; but

(iii) does not include a mere intermediary or his her;

(b) means in relation to any land to which the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act 1961 (Tamil

Nadu Act LVII of 1961) applies, a cultivating tenant as defined in clause (5) of Sec. 2 of that Act"".

12. Section 3 (1) of the Act enables the Government to direct by notification the preparation of a record of tenancy rights such village or villages as

may be specified in the Notification and provides that such records shall be prepared, maintained and revised in accordance with the provisions of

the Act and the rules made thereunder. Sub-sec. (2) of S. 8 reads as follows -

The record referred to in sub-sec. (1) shall contain the following particulars, namely - (a) the survey number or sub-divisional number, extent and

local name if any of the land; (b) the name and address of the land owner; (c) the name and address of the intermediary, if any; (d) the name and

address of the tenant cultivating the land; and (e) such other particulars as may be prescribed".

It is admitted that the rules framed under the Act have not prescribed any other particulars as contemplated in Section 2 (3) (a) of the Act. Sub-

sec. (3) (a) of Sec. 3 provides for the publication of a notice in the village by the Record Officer, after the publication of the notification under sub-

sec. (1), informing the public that a record of tenancy rights is to be prepared for that village and that the landowner, tenant or intermediary of

every land which has been left for cultivation shall intimate in writing him of his interest in such land. Sub-sec. (4) of S. 3 enables the Record Officer

to prepare a draft record of tenancy rights for the village on the basis of the intimation given under clause (a) of sub-sec. (3) of Sec. 3 or on the

basis of the information obtained by him under Sec. 9 or in such other manner as may be prescribed and after giving a reasonable opportunity to

the parties concerned to make their representations either orally or in writing. Sub-sec. (5) of Sec. 3 provides for a draft of the record so prepared

to be published in the District Gazette of the District in which the village is situated and an extract of the entries in the draft record relating to any

survey number or sub-division number of the land to be served on the landowner, intermediary, if any, and the tenant concerned. Sub-sec. (6) of

S. 3 enables any person aggrieved by such draft record either on the ground that the entry in respect of particulars relating to him is incorrect or on

the ground that his name or other particulars relating to the land which has been let for cultivation and in which he has interest either as landowner,

intermediary or tenant have been omitted to be included in such draft record, to make an application to the Record Officer for rectification of such

entry or for the inclusion of such name or particulars in the draft record of tenancy rights. Sub-sec. (8) of Sec. 3 enables the Record Officer to

pass appropriate orders on such application after giving a reasonable opportunity to the parties concerned to make their representations. Sub-sec.

(9) of Section 3 enables the Record Officer to make necessary alterations in the draft record of tenancy rights in accordance with such orders on

the application referred to above. Sub-sec. (10) of Sec. 3 provides for publication of the final record of tenancy rights in the Fort St. George

Gazette and the record so published being called as the approved record of tenancy rights. The same sub-section also provided for the approved

record of tenancy rights being published in the District Gazette of the district in which the village is situated.

13. Section 4 enables interested persons making application to the Record Officer for inclusion of particulars relating to such land in the approved record of tenancy rights.

14. Section 4-A introduced by the Tamil Nadu Act 34 of 1972, enables the Record Officer to take suo motu action for inclusion of particulars

either in the draft or proved record of tenancy rights as the case may be.

15. Section 5 provides for modification of entries in the approved record of tenancy rights.

16. Section 6 of the Act provides for appeal by any person aggrieved by an order made under sub-sec. (8) of Sec. 3, sub-sec. (3) of Sec. 4 or

sub-sec. (3) of Sec. 5 to such authority as may be specified by the Government in that behalf and further provides that the decision of such

authority on the said appeal shall, subject to the provisions of Sec. 7, be final.

17. Section 7 provides for revising the appellate order and states that the District Collector or such officer as may be specified by the Government

in that behalf, may of his own motion or on the application of a party call for and examine the record of any Record Officer or appellate authority

within his jurisdiction in respect of any proceeding under the Act and pass such orders as he may think fit.

18. Section 8 of the Act enables the appellate authority or revisional authority to give necessary directions to the Record Officer to amend the

approved record of tenancy rights in accordance with the orders passed by them in appeal or revision.

19. Section 9 imposes an obligation on any person whose rights or interests are required to be, or have been entered, in a record of tenancy rights

under this Act to furnish or produce for the inspection of the Record Officer all such information or documents needed for the correct preparation

or revision thereof, as may be within his knowledge or in his possession or power, on a requisition by the Record Officer.

20. Section 10 of the Act provides for the application of certain provisions of the CPC to the proceeding before the Record Officer or the

appellate authority or the District Collector or other officer referred to in Sec. 7 and Sec. 11 deals with penalty for failure to furnish information or

to produce any document requisitioned under Sec. 9, while Sec. 12 provides for penalty for furnishing false information. Sec. 14 (1) is important

and it reads as follows-

After the date of the publication in the Fort St. George Gazette of the approved record of tenancy rights under sub-sec. (10) of Sec. 8 in respect

of any village, every person making an application in of any of the provisions of in pursuance Cultivating Tenants Protection Act 1955 (Madras Act

XXV of 1955) or the Madras Cultivating Tenants (Payment of Fair Rent) Act 1956 (Madras Act XXIV of 1956) or Chaps. III and IV of the

Madras Public Trusts (Regulation of Administration of Agricultural Lands) Act 1961, (Madras Act LVII Of 1961), relating to any land in such

village shall I annex to the application a certified copy of any entry in the approved to such land"".

Sub-sec. (2) of Sec. 14 states that if the applicant fails to comply with the provisions of sub-sec. (1) for any cause which the officer or authority to

whom such application is made deems sufficient, he shall be required to produce such certified copy within a reasonable time to be fixed by such

officer or authority and if such certified copy is not so annexed or produced, the application shall be rejected, but the rejection shall not of its own

force preclude the presentation of a fresh application in respect of the same subject matter, with a certified copy annexed.;

Sec. 13 of the Act states -

Any entry in the approved record of tenancy rights shall be presumed to be true and correct until the contrary is record of tenancy rights relevant

proved or a new entry is lawfully substituted therefore"".

Section 16 states -

Subject to such conditions and to the payment of such fees as may be

prescribed, the approved record of tenancy rights, shall be open to the inspection of the public at reasonable hours and certified extracts therefrom or certified copies thereof shall be given to all persons applying for the same.

It is only after Sec. 16 that Sec. 16-A was introduced with effect from 27-11-1972, by Sec. 5 of the Amending Act, namely, the Tamil Nadu Act

34 of 1972. The said Sec. 16-A of the Act reads as follows-

16-A Bar of jurisdiction of civil courts - No civil court shall have Jurisdiction in respect of any matter which the record, officer, the District

Collector or other officer or authority empowered by or under this Act has to determine and no injunction shall be granted by any court in respect

of any action taken or to be taken by such officer or authority in pursuance of any power conferred by or under this Act"".

21. Section 17 deals with indemnity in respect of anything done in good faith or intended to be done "in pursuance of the Act or rules made

thereunder.

22. Section 18 confers powers on the Government to make rules, carry out the purposes of the Act and Sec. 19 provides that nothing contained in

this Act shall apply to any land owned by the Central Government or any State Government or any local authority. Sec. 20 states that the

provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law, custom, usage or contract.

23. It is against the background of the above provisions, it has become necessary to consider the exact scope of Section 16-A of the Act.

24. This Sec. 16-A came up for consideration before a Bench of this court in Muniyandi Vs. Rajangam Iyer, , already referred to. That matter

came before a Bench on a reference made by N. S. Ramaswami, J. In that case, the court had to decide in O. S. 547 of 1971 on the file of - the

court of the District Munsif, Thiruvaiyaru, whether a particular person was a cultivating tenant or not. That suit was dismissed on the ground that

Section 16-A barred the civil court's Jurisdiction to decide the matter. But the dismissal of the suit was taken up in appeal in A. S. 86 of 1974 and

the learned Subordinate Judge of Thanjavur on 11-2-1975 allow tile appeal and remanded the matter with a direction that the matter should be

disposed of afresh. Against the said order of remand, an appeal A. A. O. 213 of

1975, was preferred to this court. The appellant Claimed that he was a cultivating tenant entitled to the protection of the Tamil Nadu Act 25 of 1955, that in view of the provisions contained in the Act, the civil court had no jurisdiction to go. into the question whether a particular party was a cultivating; tenant or not, that question could be decided only by the hierarchy of officers under the Act, that the Record Officer under the Act had already entered the appellant as a cultivating tenant and that therefore the civil court had to accept the position that the appellant was a cultivating tenant. On behalf of the respondent-landlord, the contention was that under the provisions of the Act, the Record Officer was only to prepare a register giving the name or names of the cultivating tenants, that there was no specific provision in the said Act authorising any one to decide the question whether a particular party was or was not a cultivating tenant and that, therefore, the civil court's jurisdiction to entertain such a question was not ousted. After referring to the provisions of the Act before its amendment by the Tamil Nadu Act 34 of 1972, the Bench observed -

As the Act stood originally before Act XXXIV of 1972, there was no specific bar of the civil court's jurisdiction, to decide any matter which the Record Officer or the District Collector or other officer has to decide. We need not stop to consider whether, having regard to the scheme of the Act indicating matters to be decided, the officers who have the authority to decide and further remedies by way of appeal and revision, the civil court's jurisdiction, by necessary implication, would stand excluded in respect of matters which those officers have to decide"".

After the above observation, the Bench extracted Sec. 16-A of the Act, as introduced by the Tamil Nadu Act 34 of 1972, and proceeded to state-

The section admits of no doubt that a civil court has no jurisdiction to decide any matter which the Record Officer, District Collector or other officer or authority empowered by or under the Act should determine. The court is also forbidden from granting injunction in respect of any action taken or to be taken by such authority or officer, in pursuance of any power conferred by or under the Act. We are told that what led N. S. Ramaswami J. to make the reference to a Division Bench was a consideration of the latter part of Sec. 15. Apparently he thought if an entry in the

approved record of tenancy rights should be presumed to be true and correct until the contrary was Proved or a new entry was lawfully substituted

therefore, to that extent the civil court's jurisdiction should not be taken to have been excluded. In other words, evidently his impression was that a

certain area of civil court's jurisdiction was still available and the ambit of Sec. 16-A should be read accordingly. We are of opinion that Sec. 15 is

not jurisdiction section. It only provides for a rule of evidence, namely, presumption of correctness of entries in the approved record of tenancy

rights. This presumption cannot, of course, be rebutted until the contrary is proved or a new entry is lawfully substituted therefor. The words "until

the contrary is proved" and the words "or a new entry is lawfully substituted therefore are to be read with reference to the provisions of the Act.

This is not indicative of an area of jurisdiction still left with the court to decide any matter which is entirely within the jurisdiction of the officers, who

are empowered by or under the Act to decide. As a matter of fact, Sec. 5, as we have already indicated, provides for notification of entries in the

approved record of tenancy rights and if a decision of the Record Officer is taken up in appeal and a direction is given for modification, Section 8

provides for amendment to be made in the record of tenancy rights according to the appellate decision applies also to a revision order. The Act,

therefore, indicates and provides for the remedy to correct the record by following the procedure laid down. Until the contrary is proved or a new

entry is lawfully substituted therefor, the entry shall be presumed to be correct. It is perfectly clear and has nothing to do the question of jurisdiction

The language of Section 16-A, as indicated by us, admits of no doubt that the civil court's jurisdiction is expressly excluded in respect of any

matter which the Record Officer, District Collector or the officer, empowered by or under the Act has to determine.

The order of the Munsif in this case dismissing the suit is restored and the appeal is -allowed. No costs"".

25-26. With reference to the above decision, the following comments are called for:

1. The Bench has not expressly decided the exact matters with reference to which the jurisdiction of the civil court is barred and it has merely

repeated the language of the section by stating that the Jurisdiction of the civil court is expressly excluded in respect of any -matter which the

Record Officer or the District Collector or other officer empowered by or under the Act has to determine. The decision itself has not enumerated what those matters are.

2. However, the decision has held that the controversy as to whether a particular person is a cultivating tenant or not Is a matter which the Record Officer or the District Collector or other officer empowered by or under the Act has to determine and therefore the civil court's jurisdiction is expressly excluded in respect thereof".

27. With the conclusion of the Bench that the civil court's jurisdiction is expressly excluded in respect of the question whether a particular person is a cultivating tenant or not we agree and we shall indicate our reasons further in the course of this judgment. However, the actual conclusion of the

Bench is not correct. We have already referred to the fact that the suit in that case was O. S. 547 of 1971, that is, a suit instituted before the

coming into force of Sec- 16-A of the Act, which came into force only on 27-11-1972. Before the introduction of Sec. 16-A, there was no

provision in the Act excluding the jurisdiction of the civil court on any matter. Consequently, the suit O. S. No. 547 of 1971, which involved the

determination of the question whether a particular person was a cultivating tenant or not was competently instituted in a civil court and the civil

court had jurisdiction to decide that controversy. The language of S. 16-A neither expressly nor by necessary implication takes away that

jurisdiction. If the intention of the Legislature was that 6. 16-A should apply even to suits instituted before its introduction, it would have provided

for as to what should happen to those suits. Once a suit is completely instituted in a civil court, that suit must terminate in one of the methods

known to law, namely, either it is dismissed or it is decreed, and cannot be left in the air. If it was the intention of the Legislature that the moment

Sec. 16-A came into force, even pending suits in respect of matters covered by Sec 16-A should not be proceeded with, the Legislature would

have provided for the abatement of those suits or the dismissal of those suits or transfer of the matter covered by those suits to the appropriate to

authority under the Act. The Legislature not having made any such provision, it is indisputably clear that Sec. 16-A was not intended to and could

not affect, any suit instituted, prior to its, introduction, even when the suit was in

respect of a matter covered by Sec. 16-A.

28. Consequently, as far as the Bench decision referred to above is concerned, the learned District Munsif was wrong in dismissing the suit on the

ground that Sec. 16-A of the Act barred the jurisdiction of the civil court to decide the matter involved therein and equally the Bench was in error

in restoring the order of the learned District Munsif dismissing the suit without realising that the suit was instituted prior to the introduction of

Section 16-A of the Act, and therefore, could not affect the normal and natural course of that suit.

29. The other Bench decision of this court, namely, *Sankaralinga Thevar v. Thirumalammal*, 1977 1Mad LJ189 gives effect to our view regarding

the non-applicability of Sec. 16-A of the Act, to suits instituted prior to the coming into force of that section. In that case, the appellant filed a suit

O. S. No. 432 of 1971 and it was held by judgment dated 19-4-1972, that the appellant was a cultivating tenant and that he had not surrendered

possession of the lands. Against that judgment respondents 1 to 3 before the High Court preferred an appeal and that was pending before the

Subordinate judge, Madurai. Simultaneously the Record Officer under the Act took proceedings under the provisions of the Act for preparation of

the record. The appellant had applied to the Special Tahsildar (Tenancy Records) for the inclusion of his name as a tenant in respect of the lands in

question. The Record Officer allowed the petition ex parte, as by that time the civil court had declared the appellant as a cultivating tenant.

Respondents 1 to 3 before the High Court filed an appeal before the Revenue Divisional Officer, namely, the appellate authority. The appellate

authority held that the decision the Records Officer in having included the name of the appellant as the tenant was not correct and therefore set

aside the order of the Records Officer. The appellant's revision petition to the District Revenue Officer failed and therefore the appellant filed W.

P. W75 of 19174, to quash the order of the revisional authority. That petition having been dismissed, in limine, the matter was taken up by way of

writ appeal, which was disposed we the of by the Bench. In that context, the Bench observed-

"When the Records Officer took the petition for disposal on 2-8-1972, the judgment and decree of the civil court were in force and following the

civil court's judgment, the Records Officer allowed the of Sankaralinga Thevar (appellant). It may be noted that on the date when the civil court passed the decree, Sec. 16-A was not in force. It was enacted as an amendment which came into force on 27-11-1972. When the appeal was taken by the Revenue. Divisional Officer on 7-12-1973, the amendment had come into force; so also when the revision was taken by the District Revenue Officer.

The question that arises is as to the effect of the civil courts decree. It may be noted that on the date the civil court passed its decree and judgment

Sec. 16-A was not in force and the jurisdiction of the civil court was not barred. The result is that there is a valid civil court decree and judgment,

which can be set aside only by a process known to law i.e. preferring an appeal to the appellate court which, respondents have done.

It was contended by the learned counsel for the respondents 1 to 3 that after Sec. 16-A was enacted, the Revenue Divisional officer and the

District Revenue Officer had jurisdiction under the Act to determine the record of rights, ignoring the decree of the civil court. We are unable to

accept the contention. When once a civil court passed its judgment and decree under the same Act (sic) validity with jurisdiction it can be aside

only by a procedure known to law. Any other tribunal constituted by law cannot act in such a manner as to set aside the civil court's judgment and

decree. In this view, the Revenue Divisional Officer and the District Revenue Officer erred in ignoring the civil court's judgment and decree. The

civil court question as to the rights of parties and also the question as to the jurisdiction of the civil court will all have to be argued when the appeal

is heard by the appellate judge. The order of the Revenue Divisional Officer and the District Revenue officer, when the decree of the civil court is in

operation, cannot be sustained".

We are of the opinion that the above Bench decision correctly lays down the effect of Sec. 16-A of the Act. We shall go a step further and point

out that a suit which has been instituted prior to the coming into force of Sec. 16-A of the Act will have to run its natural and normal course

prescribed by law without in any way being affected by the provisions contained in Section 16-A of the Act, because there is nothing in Section

16-A expressly or by necessary implication taking away the jurisdiction of the

Civil Court validly and competently assumed at the first instance.

Consequently even if a decree had not been passed in a suit at the time when S. 16-A came into force, the fact that Section 16-A came into force

during the pendency of the suit will not prevent the court from exercising its jurisdiction lawfully and validly invoked and the same principle will

apply to the further course of the suit in the form of appeal or revision.

30. V. Ramaswami J, had occasion to deal with this aspect of the matter very elaborately in his judgment in Govindarajan and Others Vs. K.A.N.

Srinivasa Chetty and Others, . In that case, the suit was filed on 4-7-1970 and the decree of the trial court was dated 5-12-1972 and the

compromise recorded before the appellate court was on 19-11-1975; that is, the decree of the trial court as well as the recording of the

compromise by the appellate court was subsequent to the coming into force of S. 16-A, In that context, the learned judge observed-

Section 16-A which is extracted above is not in terms made retrospective. There is no provision also in the Act as to what should happen to the

suits which are pending on the day when S. 16-A was introduced. Neither the suit had been abated nor it had been transferred to the Record

Officer for disposal according to the Record of Tenancy Rights Act. In the absence of any such provision the suit itself could not be dismissed as

barred u/s 16-A.

For coming to this conclusion, the learned judge derived assistance from the decision of this court in Ganapathy Raja Valia Raja of Edapally,

Sivaroopam Vs. The Commr. for Hindu Religious and Charitable Endowments, Madras and Others, and the decision of the Supreme Court in

Dewaji Vs. Ganpatlal, .

31. In Valia Raja of Edapally v. Commr. for H. R. and C. E. Madras, 67 Mad LW 853: AIR1955 Mad 3781, the suit was filed before the

District Court South Malabar, for setting aside an order modifying a scheme settled under S. 57 of Act 11 of 1927. Sub-Sec. (7) of S. 57

conferred the right of suit on the trustee or any person having interest to institute a suit to set aside or modify a scheme within six months of date of

publication. Pending that suit, Madras Act 11 of 1927 was repealed and re-enacted as the Madras Hindu Religious and Charitable Endowments

Act XIX of 1951.

32. Though there is a provision similar to S. 57 (7) of the old Act, under the new Act a suit to set aside or modify the scheme will have to be filed

before the Subordinate judge's Court having jurisdiction over the area and not the District Court. The District judge before whom the suit was filed

under the old Act therefore felt that his jurisdiction to try and dispose of the suits or applications, commenced under the old Act and pending

before him had ceased and in that view directed the return of the plaint. Against that order an appeal was preferred and this court held that a suitor

has all the rights attaching to the institution of a suit in force at the time of the commencement of the suit preserved to him throughout its career, that

a statute should not be so construed as to take away an action which has been well commenced, though it is open to the Legislature to defeat such

a vested right, a very strong and distinctive language should be used to have that effect, that is, either there should be express enactment depriving

a suitor of that right or it must be by necessary intendment and that in the absence of any such provision, the District Court had the jurisdiction to

continue the suit validly instituted before it.

33. In Dewaji Vs. Ganpatlal, , the landowner filed a suit against the tenant for recovery of possession with damages and mesne profits. The suit

was filed on 17-9-1951. Pending that, the Berar Regulation of Agricultural Leases Act 1961, was amended introducing three Sections 16, 16-A

and 16-B. Relying on these provisions the tenant contended that the determination of the question whether a person is a tenant or not was a matter

entirely within the jurisdiction of the Revenue Court and the jurisdiction of the Civil Court has been ousted. The Additional District judge, who

heard the suit, held that the amending Act did not affect the pending proceedings. Though the decision of the trial court, the Division Bench of the

Court of Bombay held that there was no bar for proceeding with the pending suit. The Supreme Court upheld that view by pointing out that if the

Legislature Intended to oust the jurisdiction of Civil Courts, it must say so expressly or by necessary implication and that there were no words in

Ss. 118, 16-A and 16-B which could lead to the necessary inference that those, provisions were intended to apply, to appeals pending when the

1953 Act came into force.

34. Under these circumstances, we hold that Sec. 16-A of the Act did not in any

way affect the jurisdiction of the Civil Court in respect of suits or proceedings validly instituted before the coming into force of the said section and pending on the date when the said section came into force, whether in the original court or in the appellate or revisional court. Consequently we have to prove of the decision of the Bench *Itaralinga, Thevar v. Thirumalammal* 1977 1Mad LJ189 and that of V. Ramaswami J. in *Govindaraja v. Srinivasa Chetti* 90 Mad LW 811. Though we approve of the decision of the Bench -in *Muniyandi Vs. Rajangam Iyer*, , in so far as it held that S. 16-A of the Act barred the exercise of the jurisdiction by a Civil Court to determine -whether a particular person is a cultivating tenant or not under the Act we hold that the said decision was erroneous inasmuch as it applied the bar imposed by S. 16-A of the Act to a suit which was pending on the date when the said section came into force. With regard *Sankaralinga Thevar* to the decision in *Sankaralinga Thirumalammal* LJ 189, we must record our disagreement with one observation. As we pointed out already, the Bench held-

The question as to the rights of parties and also the question as to the jurisdiction of the Civil Court will all have to be argued when the appeal is heard by the appellate judge".

In our view, once the Bench has held that Sec. 16-A did not affect the suit already filed and the decree passed therein cannot be ignored by the Record Officer and others, the question as to the jurisdiction of the Civil Court being argued before the appellate court could not possibly arise.

35. Our attention was also drawn to a decision of N. S. Ramaswami J. in *Ganesan v. Madurai Achari* (1978) 91 Mad LW 6. The learned judge was considering the question as to how far the provisions of the Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act (Act 40 of 1971) and the Tamil Nadu Occupants of Kudiyruppu (Protection from Eviction) Act (Act 38 of 1961), excluded the jurisdiction of the Civil Court. Before the learned Judge, reliance was placed on the Bench decision in *Muniyandi Vs. Rajangam Iyer*, The learned judge observed-

It is enough to note that the decision reported in *Muniyandi Vs. Rajangam Iyer*, , would not help the defendant, as it did not decide what is within the special jurisdiction and what is not. The above judgment does not say that the question whether a person is a cultivating tenant or not, is within

the special jurisdiction of the Record Officer. It does not say that the Civil Court has no jurisdiction to investigate such a question

We are of the opinion that the learned Judge was right when he stated that that Bench decision did not decide what matters were within the special

jurisdiction of the Record Officer and what were not. However, we are unable to agree with the learned judge when he stated that the above

judgment did not say that the question whether a person is a cultivating tenant or not is within the special jurisdiction of the Record Officer, since

that was the basis of the said decision.

36. The next aspect to be considered, the ascertainment of the ambit, amplitude and the extent of the interdict imposed by S. 16-A of the Act, on

the exercise of jurisdiction by a Civil Court. We have already extracted S. 16-A. Two things are clear from the language of the section. One is, the

interdict is on the jurisdiction of the matters which by or under the Act have to be determined by the Record Officer, the District Collector or other

officer or authority empowered by the Act. The section itself does not enumerate as to what those matters are. The second is, the interdict is not

on any particular proceeding in the Civil Court, but only on the exercise of the jurisdiction in respect of matters. Controversies that come before a

court or a tribunal cannot be either pigeon-holed or put in strait-jackets. They may be of different varieties as well as different standards. For the

purpose of I deciding the main controversy, the court or the Tribunal may have incidentally to decide a number of subsidiary questions or

controversies. Therefore, when the section itself does not enumerate the matters in respect of which the jurisdiction of the Civil Court is ousted,

one will have to ascertain the said matters, with reference to the other provisions of the Act conferring power or jurisdiction on the authorities

functioning under the Act. Similarly a suit or proceeding in a Civil Court may involve the determination of several matters, some of which may be

within the jurisdiction of the authorities functioning under the Act and some others outside the jurisdiction. In such a case, the suit or proceeding as

such cannot fail unless it is of such a nature that it can be terminated solely on the determination of the matter falling within the jurisdiction of the

authorities functioning under the Act. Since the section itself does not bar the institution of the suit or a proceeding, it is unnecessary to labour the

second aspect any further.

37. We shall now proceed to consider the first aspect of the matter. As far as the first aspect is concerned, as we have pointed out already, we

have to ascertain the matters covered by Sec. 16-A with reference to the other provisions of the Act dealing with the matters to be determined by

the authorities functioning under the Act. Two provisions in the Act which are relevant in this behalf are S. 3 (2) and Section 14 (1), which we have

extracted already. Section 3 (2) of the Act refers to the particulars which the record, directed to be prepared under sub-sec. (1) thereof, should

contain, while Sec. 14 (1) provides for a certified copy of a record being annexed to an application made in pursuance of the provisions of the

enactments enumerated therein. The object of the Act as well as the provisions contained in Section 3 (2) makes it clear that a Record Officer or

the appellate or revisional authority has to determine the following matters- (1) the number or sub-division number, extent and local name, if any, of

the land let for cultivation by a tenant; (2) the name and" address of the landowner; the name and address of the intermediary, if any; and (4) the

name and address of the tenant; cultivating the land. It may be prima facie stated that these are the four matters which are required to be

determined by the Record Officer or the appellate or revisional authority under the provisions of the Act. However, the necessity to determine

these questions may occur in the context of different controversies and not purely on a specific dispute with respect to these particulars alone. Even

the determination of the particulars enumerated in S. 3 (2) cannot be in isolation in respect of any one particular matter but can only be in the

context of preparing the approved record showing the particulars in respect of the land and who is the tenant and who is the landowner. For

instance, the statutory requirement for the preparation of a record under the Act is that the land must have been let for cultivation by a tenant. A

controversy may arise whether the land has been let for cultivation by a tenant at all. The question to be considered is, whether the determination of

that controversy is within the exclusive jurisdiction of the authorities Act so as to bar the jurisdiction of the Civil Court under S. 16-A. From the

language of S. 3 (2) it cannot be stated that the determination of that controversy is within the exclusive jurisdiction of the authorities functioning

under the Act, though the determination of that controversy is basic and fundamental to the exercise of the jurisdiction by the Record Officer and

the other authorities under the Act The very object of the Act is to provide for the preparation and maintenance of record of tenancy rights in

respect of agricultural lands and therefore if there is no tenancy in respect of a land, there is no question of any further particulars being determined.

This aspect is made clear even from the definition of the expression "landowner" occurring in Sec. 2 (5) of the Act, because according to the said

definition, "landowner" means the owner of the land let for cultivation by a tenant and includes the heirs, assignees or legal representatives of such

owner or persons deriving rights through him. Consequently, the controversy as, to whether a land has been let for a on by a tenant or not is one

constituting the jurisdictional issue which a record officer has to decide before he can determine any other matter under the Act. But that

controversy cannot be said to be within the exclusive jurisdiction of the authorities functioning under the Act, because to hold so will enable the

statutory authorities to assume jurisdiction by erroneously deciding the jurisdictional issue. If the controversy arises, the authorities functioning under

the Act have necessarily to decide the same, because a decision on that controversy alone will determine the jurisdiction of the authorities

functioning under the Act. If the decision is that the land has been let for cultivation by a tenant, then the Record Officer will have to determine the

further particulars provided for in S. 3 (2) of the Act. If, on the other hand, the decision of the controversy a that the land has not been let for

cultivation by a tenant, there is no question of there being any tenancy rights in respect of the said land and consequently, there is no question of the

Record Officer ascertaining or determining any further particulars in this behalf. Therefore, if such controversy arises, that controversy cannot be

said to be within the exclusive jurisdiction of the authorities functioning under the Act, and any determination of that controversy by the authorities

can be said to be only incidental to the assumption of jurisdiction by the authorities under the Act Subject to this qualification, it can be held that

once the Record Officer or any other authority functioning under the Act has come to the conclusion that the land has been let for cultivation by a

tenant, the matters provided for in S. 3 (2) have to be determined by the Record Officer, or other authority functioning under the Act, and to that

extent the jurisdiction of the Civil Court is barred under S. 16-A of the Act.

38. With particular reference to the facts of this case, as the Record Officer had jurisdiction to decide the name and address of the tenant

cultivating the land, if there are competing claims by two persons that they are cultivating tenants he had necessarily to decide that question. In all

matters which may arise incidental to the determination may arise incident of the matters mentioned in Sec. 8 (2), the Record Officer or the

appellate or revisional authority cannot be said to have exclusive jurisdiction and with reference to those matters, the Jurisdiction of the Civil Court

cannot be said to have been barred or ousted under S. 16-A of the Act.

39. The question came to be decided by one of us (Ramanujam J.) in Palanisami v. Ramaswami Gounder S. A. No. 1496 of 1976, judgment D/-

5-1-1977. That arose from a suit filed for a permanent injunction restraining the defendants from interfering with the possession of the suit property

by the plaintiff as a cultivating ten plaintiff in the suit was the first respondent before this Court and his case was that he took the suit property on

lease from respondents 2 and 3 in 1967 on an annual rent at Rs. 400, that he continued to be in possession of the land as a cultivating tenant ever

since, that though he was entitled to the benefits of the Tamil Nadu Act XXV of 1955, respondents 2 and 3 had sold the land on 7-4-1975 to the

appellant who had chosen to interfere with his possession on the bask of the said purchase and that that lad occasioned his suit for permanent

injunction. One of the defences put forward by the appellant and respondents 2 and 3 was that after the period of one year from the date of the

lease, the first respondent-plaintiff had surrendered possession of the land, that subsequently he was not possession of in the same and that

therefore he was not entitled to the permanent injunction. The courts below had, rejected this contention of the appellant third defendant and

respondents 2 and 8 (defendants 1 and 2) and this court concurred with that conclusion. However, one other point that was urged before this

Court was that S. 16-A of the Act excluded the jurisdiction of the Civil Court and the question as to whether the first respondent was a cultivating

tenant in respect of the said lands could not be gone into in that suit, as it was a matter to be decided exclusively by the authorities constituted

under the Act and in support of that contention reliance was placed on the Bench

decision of this court in Muniyandi Vs. Rajangam Iyer, referred to already. After referring to the said decision, this court in the judgment in the second appeal referred to above observed-

Dealing with the contention regarding the jurisdiction of the Civil Court to entertain this suit as framed, the lower appellate court has expressed the view that the relief sought for in the suit does not in any way, infringe the functions of the Record Officer, and that, therefore, the first respondent

can invoke the jurisdiction of the Civil Court if his possession is sought to be disturbed by the appellant and respondents 2 and 3, and that S. 16-A

will not, therefore, stand in the way of the first respondent maintaining this suit. I am of the view that though S. 16-A excludes the jurisdiction of the

Civil Court to determine a question which the authorities constituted under the Tamil Nadu Act X of 1969 had to decide, the present suit, which is

one for mere injunction, can be maintained in the Civil Court. It is true that for the purpose of granting the relief of injunction claimed in the suit, the

court has to incidentally go into the question as to who is in possession of the property and in what capacity. The fact that the court has to consider

an incidental question for the purpose of granting the main relief claimed in the suit will not make the suit incompetent in a Civil Court. In Rama-

Papiah v. Ellappa Gounder, 1960 2 MLJ SN26, Ramachandra Iyer J. as he then was, had held that an injunction, which is preventive remedy, can

be grant- only by the Civil Court, that there is no inherent power in any tribunal to grant an injunction and that, therefore, the tenant has always got

his remedy to approach the Civil Court for the relief by way of injunction whenever his possession is interfered with. In Ramachandra Sastrigal V.

Kuppusami Vanniar 1961 1Mad LJ335 while dealing with the scope of S. 6-A of the Tamil Nadu Act XXV of 1955, a Division Bench had

expressed the view that in a simple suit for an injunction laid in a Civil Court for restraining the defendant, from interfering with the plaintiffs

possession, the defendant, even if he were to be a cultivating tenant entitled to the benefits of the Act, cannot gain anything by merely having the

forum of adjudication being shifted from the Civil Court to the Revenue court as it is obvious that a Revenue Court cannot grant any injunction. In

Sri Venkataramanaswarny Deity v. Vadugammal 1974 1Mad LJ431, a Division Bench of this Court, while construing the scope of S. 93 of the

Tamil Nadu Hindu Religious and Charitable Endowments Act 1959, held that a relief which cannot be granted by the Deputy Commissioner under

S. 57 can be asked for in a Civil Court and that the Civil Court, while deciding whether the plaintiff is entitled to the relief asked for, can go into

and decide incidental questions which may fall within S. 57. The Bench has observed -" Therefore, the preponderance of authority of our court is

that a civil suit is not barred in respect of a relief which cannot be anted by the Deputy Commissioner and at in such a suit, the Civil Court has

jurisdiction to decide incidental issues which are within the jurisdiction of the Deputy Commissioner"".

On the pleadings in the case, there are three possibilities. Firstly, the plaintiff in the suit might have been in possession. Of the suit lands on the date

of suit and he may be a cultivating tenant entitled to the benefits of the Tamil Nadu Act XXV of 1955. If this is the real position, an injunction must

issue in favour of the plaintiff. Have Secondly, the plaintiff might been in possession of the suit lands on the date of suit but he might-not be a

cultivating tenant entitled to the benefits of the Act. Even in such a case the plaintiff is entitled to an injunction by virtue of his having been in

possession of the suit property on the date of suit, as he is entitled to continue in possession until duly evicted by the true owner. The third

possibility is the plaintiff might not have been in possession of the suit lands on the date of suit. In such a case whether he is a cultivating tenant

entitled, to the benefits of the Act or not, the suit must fail. Therefore, if the plaintiff is in a position to get an order of injunction even without

establishing his status as a cultivating tenant, the suit cannot be thrown out merely because it raises an incidental question as to whether the plaintiff

is a cultivating tenant or not. I am, therefore, of the view that the Civil Court's jurisdiction to entertain this suit for injunction cannot be said to have

been taken away under S. 16-A of the Tamil Nadu Act X of 1969"".

40. We are of the, opinion that the above decision correctly represents the scope and effect of S. 16-A.

41. The above second appeal dealt with one type of suit only. Instances can be multiplied. A landowner may file a suit for in injunction putting

forward the contention that the defendant, who was his tenant, had surrendered possession of the land, but subsequently was seeking to interfere

with his Possession. If the suit is one for a simple injunction only, the question that has to be decided will be, whether the plaintiff landowner was in possession of the suit property on the date of the suit or not, and no other question will arise. All other questions as to the defendant having been previously a cultivating tenant and his surrendering possession of the property subsequently will be only incidental to the determination, of the question as, to whether the plaintiff has established that he was in possession of the suit property on the date of the suit or not. Once it is held that the plaintiff-landowner was not in possession of the suit property on the date of the suit, the suit will have to be dismissed irrespective of the question as to whether the defendant was previously a cultivating tenant or not. In such a suit, if the prayer for grant of injunction is coupled with the prayer for declaration that the defendant was not a cultivating tenant or that the defendant had surrendered possession of the property, then the Civil Court may not have jurisdiction to go into the question whether the defendant was a cultivating tenant or not. Similarly, if the cultivating tenant files a suit for declaration that If he is the cultivating tenant of the land in question and as a consequential relief prays for recovery of possession from the land owner-defendant or an injunction, the primary relief being one of declaration of his status as a cultivating tenant, the other reliefs being consequential, the Civil Court may not have jurisdiction to decide the controversy with reference to which the primary relief is prayed for. We may also take a case where a landowner institutes a suit for recovery of arrears of rent from his tenant and there is a controversy as to the actual extent of the land in the occupation of the tenant, which has a bearing on the quantum of rent payable by the tenant. In such a case, it cannot be held that the Civil Court has jurisdiction to try the suit, since the determination of the extent of land in the occupation of the tenant, which is one of the matters coming within the scope of Section 3 (2), of the Act, is involved. We are merely referring to these cases only by way of illustration for the purpose of showing that it is not every suit or proceedings instituted in Civil Court which raises one or other of the matters enumerated in S. 8 (2) of the Act, which, are to be determined by the authorities functioning under the Act, that will fail and what S. 16-A of the Act bears is the exercise of the jurisdiction by Civil Court In respect of matters referred to already and not the jurisdiction to deal with the suit or proceeding in other

respects.

42. Our conclusion as to what are the matters which are within the exclusive jurisdiction of the authorities constituted under the Act and with

reference to which the bar imposed by S. 16A comes into operation gains confirmation from the provisions of S. 14 (1) as already indicated. The

various enactments enumerated in S. 14 (1) are all enactments dealing with the rights and liabilities of landowners and tenants to whom land has

been let, for cultivation. In the context of the proceedings initiated under the provisions of those all the particulars mentioned in S. 3 (2) of the Act

will assume importance and the preparation of the approved record under the Act will constitute a preliminary determination of the matters

necessary for invocation of the jurisdiction of the authorities functioning under the Acts in S. 14 (1). If this aspect is borne in mind it will be

indisputably clear that the matters which are within the exclusive jurisdiction of the authorities constituted under the Act are limited by the provisions

contained in. Sec. 8 (2) the Act, because those were the particulars which are directed to be included in the approved record to be prepared

under the Act.

43. Under these circumstances, with reference to the contention advanced on behalf of the petitioner in the present writ petition, we hold that the

authorities constituted under the Act had jurisdiction to determine as to who was the tenant in respect of the land in question, as between the

petitioner and the 5th respondent for the purpose of preparing the record under the Act. Hence, on this ground, the impugned order cannot be

said to be vitiated so as to warrant the issue of a writ of certiorari.

44. However, the writ petition has to be allowed on another ground. We have already referred to the fact that the petitioner herein filed O. S. No.

261 of 1973 on the file of the court of the District Munsif, Udumalpet, for a permanent injunction restraining respondents 4 and 5 from interfering

with his possession of the lands in question and an ex parte decree was passed and that ex parte decree had become final. The complaint of the

learned counsel for the petitioner is that the fact that such ex parte decree was passed by a competent Civil Court has a great bearing on the

determination of the question as to who is the cultivating tenant of the lands in question as between the petitioner and the 5th, respondent and that

the impugned order is vitiated because it has not taken this into account at all.

45. There was some controversy at the Bar as to whether the fact of such an ex parte decree having been passed by the court of the District

Munsif, Udumalpet, in O. S. 261 of 1973 was brought to the notice of the first respondent herein, who disposed of the revision petition. After the

perusal of the records, it became clear that the petitioner herein had prominently placed reliance on such decree and yet the first respondent had

not considered the said fact at all. We are of the opinion that the fact that the learned District Munsif Udumalpet, had passed a decree for

permanent injunction as against respondents 4 and 5, though that decree was an ex parte one, will have a considerable bearing on the question as

to who among the petitioner and the fifth respondent was the cultivating tenant in respect of the lands in question and inasmuch as the first

respondent has not considered this relevant fact, his order is vitiated and is liable to be quashed.

46. Mr. T. R. Ramaebandran, learned counsel for the petitioner, placed further reliance on the fact that O. S. 296 of 1972 on the file of the court

of the District Munsif, Udumalpet, instituted by the 5th respondent for declaration that he is a cultivating tenant and for the consequential relief of

permanent injunction was dismissed for default and the 5th respondent took every step to have that order of dismissal set aside by bringing up the

matter even to this court and ultimately failed and contended that from the above fact an inference should be drawn that the 5th respondent was not

a cultivating tenant and consequently the first respondent erred in registering him as a cultivating tenant. We are not observing anything on the merits

as to whether the 5th respondent is a cultivating tenant or not, but all that we point out is that from the mere fact that the suit instituted by the 5th

respondent was dismissed for default and his attempts to have that order set aside and the suit restored to file failed, no inference can be drawn

that the 5th respondent is not the cultivating tenant. The dismissal of a suit for default is different from the decreeing of a suit ex parte because in

one case the claim of the plaintiff is just negated without investigation, but in the other case the claim of the plaintiff is allowed, though without

investigation again, and the existence of a decree as prayed for by the plaintiff, though passed ex parte, makes all the difference.

47. Under these circumstances, we are of the opinion that the order of the first respondent is liable to be quashed by the issue of a writ of certiorari

on the ground that the first respondent has failed to consider a very relevant fact having a definite bearing On the matter to be determined.

Accordingly, we allow the Writ petition and set aside the order of the first respondent dated 22-11-1975 made in B. P. No. 7 of 1975 on his file

and direct him to dispose of the said revision petition afresh, after taking into account the relevant facts including the fact that O. S. No. 261 of

1973, on the file of the court of the District Munsif of Udumalpet, instituted by the petitioner herein was decreed, though ex parte. There will be no

order as to costs in the writ petition.

48. Petition allowed.