
(1943) 09 MAD CK 0025
In the Madras High Court

Rajah of Venkatagiri

APPELLANT

Vs

Shaik Mahaboob Saheb and Others

RESPONDENT

Date of Decision : 30-09-1943

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1944 Mad 139 : (1944) ILR (Mad) 595 : (1943) 56 LW 683 :
(1943) 2 MLJ 615

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—This Civil Revision Petition came on for, hearing before one of us in the first instance and was referred to a Division

Bench as it raises questions of some difficulty and importance regarding the scope of the revisional jurisdiction of this Court u/s 115, Civil

Procedure Code.; -

2. The petitioner is the zamindar of Venkatagiri and the respondents are some of the tenants of Tirumur, a village in the zamindari. They applied to

the Sub-Collector of Gudur for relief under the Madras Agriculturists' Relief Act, 1938 in respect of the arrears of rent payable by them,

depositing certain amounts. Whicji, they claimed to be the rents due to the petitioner for fasli 1347 as required by Section 15(4) of the Act. The

zamindar contended that, as the tenants held their lands on what is known as the waram tenure, they were liable to pay rent in kind being a moiety

of the gross produce of their respective holdings, and that, therefor the deposit of money on the basis of cash, rents was due not compliance with

the provisions of the Act. He further pleaded that the sums deposited even if regarded as the value of the landlord's share of the produce,, were

much below its market value at the time and on this ground also they were not entitled to relief under the Act. "

3. The Sub-Collector found that, notwithstanding the recovery of dash rents for some previous faslis at the rate of Rs. 5 per acre, rent in kind had

not been commuted to a definite money rent in the village and that therefore, the amounts deposited "by the tenants could not be deemed to be the

rent due for fasli 1347 on the view, apparently, that, where waram rent is payable the deposit required by that Act should be of the landlord's

share of the produce itself. He did not accordingly go into the petitioner's further plea that the amounts deposited fell short of the market value of

such produce and dismissed the respondent's application,

4. The respondent preferred a revision petition to the District Collector, Nellore purporting to invoke his powers of revision u/s 205 of the Madras

Estates Land Act ""read with Section 15(4) of the Madras Agriculturists' Relief Act"". No-objection was taken to the maintainability of this

proceeding, the zamindar having remained unrepresented, and the District Collector allowed the revision petition holding that Section 15(4) of the

Madras Agriculturists' Relief Act, did not contemplate the deposit of rent in kind where such rent was payable but only of its value in money, and

that the rate of rent adopted by the tenants at Rs. 5 per acre was the proper rate. He accordingly set aside the order of the Sub-Collector and

directed him to proceed with the original petition and grant such relief to the tenants as they were entitled to under the Act. Against that order the

zamindar has brought this civil revision petition contending that the District Collector had no jurisdiction to interfere with the order of the Sub-

Collector, as Section 205, of the Madras Estates Land Act under which he purported to act had no application to the case.

5. Mr. Seshachalapathi appearing for the tenants raised a preliminary objection to the jurisdiction of this Court to interfere, while Mr. Subba Rao

for the zamindar maintained that the case fell within the scope of section 115 of the Code. It was a curious feature of the arguments on this part of

the case that many of the considerations put forward on one side tended to support the other, as the position of the parties was fairly reversed

when the learned Counsel for the tenants finally submitted that, if the preliminary objection was overruled and the Court was inclined to agree with

the zamindar's contention, this Court should itself revise the order of the Sub-Collector on the ground that the latter failed to exercise the

jurisdiction vested in him by the Madras Agriculturists' Relief Act, on an erroneous view of its provisions.

6. The preliminary objection was based on two grounds : firstly, that the Collector is not a Court "subordinate" to the High Court within the

meaning of Section 115 of the CPC and secondly-, that the application of Section 115 is excluded by Section 4 as the Collector was "exercising a

"special jurisdiction or power" conferred by the Madras Agriculturists' Relief Act. Before dealing with these contentions it will be convenient to

clear the ground by disposing of one or two minor points argued before us. As observed already, the revisional powers of this Court were invoked

primarily by the zamindar against the District Collector's order and, in the event of his contention prevailing, by the tenants against the order of the

Sub-Collector. Now, were the proceedings in which these orders were made proceedings under the Madras Estates Land Act? Though the

application to the Sub-Collector was made u/s 15(4) of the Madras Agriculturists' Relief Act it was argued that the explanation to that sub-

section showed that the proceeding was really one under the Madras Estates Land Act. This argument was advanced because, if accepted, it

would result in attracting the operation of Section 205 of the latter Act and the District Collector who purported to act under that section would

have had jurisdiction to pass his order; again the second ground of objection to the exercise of revisional powers by this Court referred to above

namely, that Section 115 of the Code was excluded by Section 4 Would not then be available, as Section 192 of the Madras Estates Land Act

would make Section 115 of the Code applicable to the proceeding. We are however, unable to accept the argument as correct. The explanation

to Section 15(4) only provided that the Court which has to exercise the powers thereby conferred shall be the Court which has territorial

jurisdiction u/s 209(1) of the Madras Estates Land Act or u/s 3(b) of the Malabar Tenancy Act, such Court in the latter case being an ordinary

Civil Court. This provision cannot, in our opinion, have the effect of attracting all the provisions of the one or the other of the Acts specified to a

proceeding u/s 15(4) as if it were a proceeding under that Act. It follows that the application made to the Sub-Collector by the tenants was a

proceeding to which the provisions of the Madras Estates Land Act could have no application. The question as to the revisional powers of this

Court must therefore be determined on the footing that the proceedings in question were proceedings under the Madras Agriculturists' Relief Act

which confers no appellate jurisdiction on this Court over the Court exercising jurisdiction u/s 15(4) in this or any other matter.

7. Turning now to that question we are not faced with any difficulty in this case in deciding whether the Sub-Collector or the District Collector was

acting as a "" Court,"" for, Section 15(4) of the Madras Agriculturists' Relief Act itself indicates that the ""Collector"" empowered to exercise the

powers thereby conferred acts as. a ""Court."" That being so, the District Collector who purported to revise the Collector's order u/s 205 of the

Madras Estates Land Act must also be deemed to have acted as a "" Court"" both because of the nature of the proceeding and because, Section

189(1) of the said Act provides that such revisional jurisdiction shall be exercised by that officer as a "" Revenue Court."" This indeed, was not

disputed before us. The only question, therefore, is whether these officers when dealing with the proceedings respectively brought before them can

be said to be Courts ""subordinate"" to the High Court within the meaning of Section 115, Civil Procedure Code, which it may be mentioned here, is

the only provision of law under which the High Courts can now exercise revisional jurisdiction, their powers of judicial superintendence having

been taken away by Section 224(2) of the Government of India Act, 1935. ""Subordination"" is nowhere denned but Section 3 of the Code

declares:

For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District

Court and every Court of Small Causes is subordinate to the High Court and District Court.

8. To say that the Collector's Court is a "" Civil Court"" within the meaning of this section will be a simple and complete solution of the problem. In

our judgment, it is also the correct solution. The preamble to the Code indicates that it is an Act to consolidate and amend the law relating to the

procedure of the "" Courts of Civil Judicature."" Section 2(4) defines a "" District Court "" as the principal Civil Court of original jurisdiction in a

District", and Section 3(24) of the General Clauses Act says that, High Court" used with reference to civil proceedings shall mean the highest Civil Court of appeal (not including the Federal Court) in the part of British India in which the Act or Regulation containing the expression operates.

9. From these provisions it seems to us that Section 3 of the Code must be interpreted as a comprehensive declaration, as a matter of corollary, of

the subordination of all " Courts of civil judicature " to the District Court in a district area and to the High Court in a provincial area. There can be

little doubt that in the present case the Sub-Collector and the District Collector were hearing and determining disputes of a civil nature and we see

no sufficient reason why the proceedings before them should not be regarded as " civil proceedings " and their Courts as "Civil Courts " for the

purposes of Section 3. It is very difficult to suppose that the Legislature, in enacting, as part of a consolidating Code, a provision dealing with the

subordination of Courts in the hierarchy of Civil Courts in the country, could possibly have left out of account an important class of Courts dealing

with particular kinds of civil proceedings assigned to them by special or local laws.

10. This conclusion is, we think, supported by the decision of the Privy Council in (1882) L.R. 9 I.A. 174 (Privy Council) . Their Lordships had to

decide whether a Collector who had passed a decree for rent as a Rent Court under the Bengal Rent Act (X of 1859) could transfer the decree

for execution into another district. The provisions of the Rent Act gave him no such power. Under the CPC of 1859, the " Civil Courts " had such

power, and the question arose whether the Rent Court was a " Civil Court" within the meaning of the Code. Various provisions of the Rent Act

were referred to in support of the contention that Rent Courts were not " Civil Courts" within the meaning of the Code. Rejecting the, contention

their Lordships observed:

It must be allowed that in these sections there is a certain distinction between the Civil Courts there spoken of and the Rent Courts established by

the Act, and that the Civil Courts referred to in Section 77 and the kindred sections mean Civil Courts exercising all the powers of Civil Courts, as

distinguished from the Rent Courts, which only exercise powers over suits of a limited class. In that sense there is a distinction between the terms;

but it is entirely another question whether the Rent Court does not remain a Civil

Court in the sense that it is deciding on purely civil questions

between persons seeking their civil rights, and whether, being a Civil Court in that sense, it does not fall within the provisions of Act VIII of 1859.

It is hardly necessary to refer to those provisions in detail, because there is no dispute but that, if the Rent Court is a Civil Court within Act VIII of

1859, the Collector has, u/s a86, the power of transferring his decrees for execution into another district." We are of opinion that the expression

Civil Court " must receive the same meaning in Section 3 of the present Code.

11. The whole argument against this view of Section 3 has been based on Sections 4 and 5 corresponding to which there were no provisions in the

Code of 1859. But as pointed out in *Aga Mahomed Hamadani v. Cohen* I.L.R. (1886) Cal. 221 with reference to Section 4, the meaning of that

kind of saving clause is that if anything in the Code is found to conflict with any special or local law the Code shall not prevail to override the

inconsistent provisions of such law. There is nothing in the Madras Agriculturists'-Relief Act inconsistent with the view that a Collector acting u/s

15(4) of that Act is a Civil Court within the Code, and Section 4 can, therefore, have no bearing on the construction of Section 3. As for Section

5, it deals with the application of the Code to Revenue Courts and enables the provincial Government, " where any Revenue Courts are governed

by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent," to declare that any

portions of the Code shall not apply to such Courts or shall only apply with such modifications as may be prescribed. For this purpose it was

necessary to define a " Revenue Court " and Sub-section (2) naturally excludes from the definition the ordinary Civil Court exercising original

jurisdiction under the Code. This, however, hardly justifies, in our opinion, any general implication that a " Revenue Court" is not a " Civil Court

within the meaning of the Code, and we see no reason to import the distinction into the construction of Section 3. On the other hand, the opening

words of Section 5(1) assume that Revenue Courts are governed by the Code in those matters of procedure upon which any special enactment

applicable to them is silent. This can only be because the Code regards these Courts either as being " Courts of civil judicature", the procedure of

which is regulated by it (see the preamble) or as being " Courts of civil

jurisdiction "" within the meaning of Section 141. A reference to the history of Section 5 makes the position reasonably plain. The decision of their Lordships in (1882) L.R. 9 I.A. 174 (Privy Council) was given just a few months after the Code of 1882 was passed. In 1883, a Full Bench of five Judges of the Allahabad High Court had to consider whether Sections 43 and 373 of the Code were applicable to proceedings before the Rent Courts established under the N.-W.P. Rent Act, 1881, and the learned Judges by a majority of four to one followed the decision in (1882) L.R. 9 I.A. 174 (Privy Council) and answered the reference by saying that "" the Revenue Courts of these provinces in those matters of procedure upon which the " Rent Act" is silent are governed by the provisions of the Civil Procedure Code."" Stuart, C.J., who dissented criticised the majority view as ""based on considerations which are beyond the domain of judicial exposition ""--Modhoo Prakash Singh v. Murti Manohar (1883) ILR 5 All. 406 295 (P.C.) In 1885, the Calcutta High Court in Adhirani Narain Kumari v. Raghu Mahapatro I.L.R.(1885) Cal. 50 followed the Allahabad decision. These decisions led to the introduction of Section 4-A (corresponding to the present section" 5) in the Code of 1882 by Act VIII of 1888, in order, evidently, to make the position, as enunciated by the Allahabad Full Bench clear by legislation, adopting the very language used by the learned Judges. So far, therefore, from Section 5 affording any ground for supposing that a general distinction between Civil and Revenue Courts is maintained in the Code, it strongly supports the view that the Code is applicable to Revenue Courts also except, of course, where it is excluded by any special or local law or by any inconsistent provisions of such law or by notification by the Provincial Government. It follows that the declaration of the relative subordination of "" Civil Courts "" in Section 3 for the purposes of the Code must be taken to cover Revenue Courts as well in the absence of any saving of such Courts, and they must be deemed to be subordinate to the High Court and subject to its revisional jurisdiction u/s 115.

12. Though Section 3 interpreted in the manner suggested above affords the simplest answer to the problem, it has not always found acceptance with learned Judges. For instance, in Allan Bros. & Co. v. Bando & Co. 3, Rankin, J., as he then was, upholding the revisional jurisdiction of the

High Court u/s 107 of the Government of India Act, 1915, over an order of the Rent Controller's Court under the Calcutta Rent Act, observed:

The words " Civil Courts" in the Code appear to have a special meaning though this again is nowhere defined. I take them to mean Civil Courts

exercising all the powers of Civil Courts as distinguished from Courts which only exercise powers over civil matters of a special class or classes,

e.g., the Rent Courts under Act X of 1859 and the Land Acquisition Judge.

13. The learned Judge gives no reasons for this view though he holds that the Rent Controller was a Civil Court in the "" general sense,"" following

Nilmoni's case 4. In the Full Bench decision in Ippili Raghunadha Patro and Others Vs. Govinda Patro (dead) and Others, , where it was held by

Phillips and Odgers, JJ., Venkatasubba Rao, J., dissenting, that the High Court had no power either u/s 115 of the CPC or u/s 107 of the

Government of India Act, 1915, to revise orders passed by the Board of Revenue under Chapter XI or Section 205 of the Madras Estates Land

Act. Phillips, J., observed that:

In Section 5 Revenue Courts are clearly distinguished from Civil Courts having original jurisdiction under the Code to try such suits or proceedings

as being suits or proceedings of a civil nature, and it is apparently Courts of this latter nature that are Civil Courts within the meaning of Section 3,

Civil Procedure Code.

14. The learned Judge referred to Nilmoni's case 4, but distinguished it as dealing with Rent Courts under Act X of 1859 which were recognised

as being subordinate to the High Court. It is difficult to see what bearing such recognition had on the interpretation of the words "" Civil Courts "" in

the sections dealing with transfer of decrees for execution in the old Code which their Lordships were considering. Odgers, J., made no reference

to Section 3 at all, and Venkatasubba Rao, J., while holding that the Revenue Board was a "" Civil Court "" within the meaning of clause 16 of the

Letters Patent following Nilmoni's case 4, and that this Court had revisional jurisdiction over it as it was subject to its superintendence, dismissed

Section 3 with the remark:

There is no definition of subordination in the CPC although certain concrete instances are given in Section 3 as illustrating the rule of subordination.

15. Similarly, in the later Full Bench decision in Rajah of Mandasa v."

Jagannayakalu (1931) 63 M.L.J. 450 : ILR Mad. 883. Tiruvenkatachiar, J., in his order of reference stressed the absence of any mention of Revenue Courts in Section 3, after referring to Section 5 which makes a distinction between Revenue Courts and Civil Courts, and expressed a doubt whether, for purposes of section 115, such Courts, where no appeal lay from their decisions in suits or other proceedings to any Civil Court, could be deemed to be subordinate to the High Court. None of the majority of the Judges who decided that the Revenue Board exercising its powers under Chapter XI of the Madras Estates Land Act was not a Court at all, dealt specifically with Section 3, but Sundaram Chetty, J., in his dissenting judgment expressed the view that, Section 3 of the Code makes Civil Courts only as subordinate to the High Court and though: this section is not exhaustive there is nothing else in the Code by which we can hold that a Revenue Court is also subordinate to the High Court, the reason given being that, a distinction is maintained in the Code between a Civil Court and a Revenue Court of original jurisdiction." The learned Judge, however, proceeded to hold, following (1882) L.R. 9 I.A. 174 (Privy Council) that the Revenue Board was a Civil Court. within the meaning of clause 16 of the Letters Patent and subordinate to the High Court which is a Court of Appeal from all the Civil Courts of the Presidency and that this order was therefore revisable. It will be seen that the observations regarding Section 3 referred to above are, for the most part, obiter and proceed on what appears to us, with all respect, to be an inadequate appreciation of the true object and scope of Sections 4 and 5 which have been thought all too readily to imply a general exclusion of Revenue Courts from the purview of the Civil Procedure Code. We find, however, that the view we have expressed of Section 3, is snared by Meredith, J., in a recent Full Bench decision in *Arjun Mantara v. Maharaja Krishna Chandra Gajapathi Narayan Deo* I.L.R.(1941) Pat. 1 where the revisional jurisdiction of the High Court over decisions of Revenue Courts under the Orissa Tenancy Act was elaborately discussed, though the other two members of the Bench adopted the narrower construction of that section.

16. As we are of opinion that a complete and satisfactory answer to the problem, is to be found in section (1980) 63 M.L.J. 450 : ILR Mad. 55

on its true construction, we consider it unnecessary to embark on a detailed discussion of the numerous decisions that have been brought to our

notice. Most of them were concerned with the revisional power, of the High Court u/s 15 of the Charter Act of 1861 and Section 107 of the

Government of India Act, 1915, under which such powers were exercisable over Courts subject to the appellate jurisdiction of the High Court.

The existence of such jurisdiction over the Court whose decision was sought to be revised was accordingly the point of determination and it was

also regarded as an index of subordination for purposes of Section 115, Civil Procedure Code, where this section was also invoked. In the

application of this test, however, the cases reveal a remarkable divergence of opinion. Broadly speaking, one view holds that the constitution of the

High Court as a "Court of Appeal from the Civil Courts of the Presidency" ipso facto involves the subordination of all such "Civil Courts" the

expression being construed as including Revenue or Rent Courts dealing with civil proceedings. This view was favoured by Wallace, J., in his

referring order in *Rajah of Mandasa v. Jagannayaklu* I.L.R.(1922) Cal. 931 and was adopted by Sundaram Chetty, J., in his dissenting judgment

in that case. The other view insists that an actual relationship to the High Court must be established. "An existing thread of connecting authority

must be disclosed." That is to say, appellate jurisdiction in some form known to law must actually be exercised by the High Court or by some Civil

Court subordinate to it over the Court whose decision is sought to be revised. This is the view adopted by Rankin, J., in *Allan Bros. & Co. v.*

Bando & Co. I.L.R.(1922) Gal. 931 where the learned Judge rejects the other view observing that though "this simple principle" would have

been a complete answer in many of the decided cases the Courts "have made heavy weather before arriving at another answer." In many of the

cases cited before us, actual exercise of appellate jurisdiction was assumed to be necessary without a discussion of the reasons pro and con. For

instance in *Abdul Satar Sahib v. Special Deputy Collector, Vizagapatam Harbour Acquisition* (1923) 46 M.L.J. 209 : ILR Mad 357 this Court,

while doubting whether a Collector acting u/s 18 of the Land Acquisition Act sat as a Court, held that he was not a Court subordinate to this Court

as no appeal lies from his decision to the District Court or to this Court. No reference was made to Sections 3 and 5 of the Code or to clause 16

of the Letters Patent. The decision, being that of a Full Bench, is, of course, binding on us on the actual point decided, but we cannot accept the suggestion that it is a binding authority by implication on the true construction of Section 3 of the Code or of clause 16 of the Letters Patent, where, as here, the question arises with reference to orders passed in exercise of a jurisdiction conferred by a different Act,

17. Though in the view we have taken on the Construction of Section 3 we are not called upon to decide finally which of the two views of clause 16 of the Letters Patent is correct, we think it right to say that the view first aforementioned commends itself to us. The question of subordination being one of status and authority the nature and quality of the jurisdiction of the High Court, as a " Court of Appeal from the Civil Courts of the Presidency " must be the determining factor and not the actual exercise of appellate jurisdiction in cases brought from such Courts. This aspect is emphasised by the definition of " High Court " in the General Clauses Act, 1897, already referred to as " the highest Civil Court of Appeal " with reference to civil proceedings, which necessarily implies the subordinate status of the other Courts dealing with civil proceedings in a provincial area. It being agreed on all hands that Revenue Courts are " Civil Courts " within the meaning of clause 16 and the proceedings before them " civil proceedings," we fail to see why the subordination of such Courts should not be deduced from these provisions without having to find from an examination of the special or local statutes establishing such Courts, whether an appeal actually lies thereunder to the High Court or to a Civil Court subordinate thereto. Indeed, reading clause 16 of the Letters Patent Section 3(24) of the General Clauses Act, 1897, the preamble and Sections 3 to 5, Civil Procedure Code, in the light of the Privy Council decision in (1882) L.R. 9 I.A. 174 (Privy Council) it seems to us reasonably clear that Section 3 was intended to declare, as a matter of corollary, the relative status and authority of all Courts including Revenue Courts in the hierarchy of " Civil Courts " of which the High Court forms the apex. This, no doubt, is a simple solution of the problem and would have been a complete answer in many of the decided cases as remarked by Rankin, J. But that is no reason for re-jecting it. It is not always a recommendation of a view that " Courts have made heavy weather " before arriving at it.

18. After what has been stated above, the second ground of objection to the exercise of revisional powers by this Court in the present case,

namely, that Section 4 of the Code excludes the application of Section 115 can be disposed of in a few words. It is true that there is nothing in the

Madras Agriculturists' Relief Act corresponding to Section 192 of the Madras Estates Land Act making Section 115 of the Code applicable to

proceedings u/s 15(4). But, as we have pointed out already, Section 4 only means that if there is anything in the special or local law or in any

special jurisdiction or power thereby conferred which is inconsistent with the provisions of the Code, the latter must yield, but as there is nothing in

the special Act with which we are here concerned to indicate an intention to exclude the application of Section 115 to proceedings under that Act,

the operation of that section is left unaffected. In any other view, there could be no revision even where a "special jurisdiction or power" is

conferred on an ordinary Civil Court by a special law, e.g., by Section 10 of the Bengal and Madras Native Religious Endowments Act, an order

under which was however set aside in revision by this Court whose decision was affirmed by the Privy Council (see 22 CWN 50 (Privy Council) .

Velli Periya Mira Ravuthan v. Moidin Padsha I.L.R.(1886) Mad. 332 relied on in support of the objection is clearly distinguishable as the special

Act there in question, the 1/2 Madras Rent Recovery Act, contained a provision (section 76) which, read with Section 4 of the Code, was held to

have the effect of excluding the revisional jurisdiction of this Court. It follows that the Sub-Collector's order u/s 15(4) of the Madras

Agriculturists' Relief Act and the District Collector's order purporting to set it aside are open to revision by this Court u/s 115, Civil Procedure

Code.

19. The question next arises whether on the merits there are sufficient "grounds for interference in revision. From what has already been said, it will

be seen that the District Collector had, no jurisdiction to set aside the Sub-Collector's order as Section 205 of the Madras Estates Land Act

under which he purported to act had no application to the case. The District Collector's order cannot therefore stand. As regards the Sub-

Collector's order which the learned Counsel for the tenants has asked us to revise owing to that officer's failure to exercise the jurisdiction vested

in him by Section 15(4) of the Madras Agriculturists' Relief Act on an erroneous view of its provisions, we are of opinion that the contention is

well founded. There is no warrant for the view that Section 15(4) requires a deposit of the landlord's share of the produce where waram rent is

payable. The section contemplates only payments of money into Court in all cases, as is made clear by the rules made under the Act which provide

for an extension of time for making the deposit in cases of "bona fide mistake in calculating the price of paddy or other article payable as rent

(Rule I-A). It remains only to consider whether amounts paid into Court by the tenants represent the correct market value of the waram payable to

the zamindar. As stated already, this question has not been gone into by the Sub-Collector in view of his decision on the other point referred to

above. While we agree with the Sub-Collector that the collection of money rents at Rs. 5 per acre for a number of previous years could not bind

the zamindar to accept rents for fasli 1347 also at the same rate, it has been brought to our notice that even for the said fasli the zamindar had in

fact instructed his village officers to collect rents at the same rate of Rs. 5 per acre stating in the receipts to be passed to the tenants that the sum

represented damages due to the estate for loss of grain rents under the waram tenure. It would appear that these instructions were communicated

to the tenants and the payments came to be made accordingly. This shows that according to the zamindar's own estimate, a sum calculated at Rs.

5 per acre would cover the market value of his share of the harvested paddy which the tenants were bound but failed to deliver. It follows that the

amounts paid into Court by the tenants correctly represent the rents payable to the zamindar for fasli 1347 and that the tenants were entitled to

relief under section, 15 of the Act.

20. In the result, while setting aside the District Collector's order as being one passed without jurisdiction, we direct that an order do issue in the

same terms. As the revision petition has succeeded on a purely technical point, we direct each party to bear its own costs here and in the Court

below. The tenants will have their costs in the Sub-Collector's Court.