
(1962) 03 MAD CK 0031
In the Madras High Court
Case No : S.O. Petition No. 221 of 1961

S.A.O.S. Karuppan Chettiar

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 06-03-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109
Constitution of India, 1950 — Article 133, 136, 214, 215, 216
General Clauses Act, 1897 — Section 3(25)
Madras Estates (Supplementary) Act, 1956 — Section 1, 11(2), 7, 7(2)
Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 2(7)

Citation : AIR 1962 Mad 508 : (1963) ILR (Mad) 33 : (1962) 75 LW 536 :
(1963) 1 MLJ 127

Hon'ble Judges : Srinivasan, J; Jagadisan, J

Bench : Division Bench

Judgement

Jagadisan, J.

(1) This is an application for leave to appeal to the Supreme Court of India against the judgment in S. T. A. No. 40 of 1960 of a Bench of two

learned 14 pages of this Court functioning as a Special Appellate Tribunal, under Madras Estates (Supplementary) Act, 1956, Madras Act XXX

of 1956. The question for consideration in the Special Tribunal Appeal was whether the village of Kudimari was an "inam estate" or not, as defined

by S. 2(7) of the Madras Estates Abolition Act, Act XXVJ of 1948. The Assistant Settlement Officer held that it was an "inam estate" but on

appeal the Estates Abolition Tribunal reversed that decision and held the contrary. There was appeal under S. 1 and S. 11(2) of Madras Act XXX

of 1956 (Special Tribunal App. No. 40 of 1956) and the decision of the Estates Abolition Tribunal was affirmed. It is against this decision that the

present application has been preferred under Art. 133 of the Constitution.

(2) The learned Government Pleader appearing for the State of Madras, the respondent, in this application, has taken the preliminary objection that

the application is not competent. He contends that Art. 133 of the Constitution provides for a right of appeal to the Supreme court only against any

judgment, decree or final order in a civil proceeding of a High Court, and that the order sought to be appealed against does not answer that

description, as it has been rendered by a Special Tribunal constituted under a statute.

(3) Article 133 reads as follows:

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India

if the High Court certifies -- (a) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on

appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or (b) that the

judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or (c) that the

case is a fit one for appeal to the Supreme court;

and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case

referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law.....

Article 214 of the Constitution provides that there shall be a High Court for each State and Art. 215 states that every High Court shall be a court

of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 216 reads:

Every High court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

The expression ""High Court"" has been defined by the Constitution under Art. 366:

In this Constitution, unless the context otherwise requires, the following expressions have the meanings here-by respectively assigned to them, that

is to say x x x x x x x (14) High Court means any court which is deemed for the purposes of this Constitution to be a High Court for any State and

includes-(a) any court in the territory of India constituted or reconstituted, under this Constitution as a High Court and (b) any other court in the

territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution.

The right of appeal provided for under Madras Act XXX of 1956 against the decision of the Tribunal is contained in S. 7 of that Act. That section

is as follows:

1. Against any such decision of the Tribunal, the State Government, within six months from the date of the decision, and any person aggrieved, by

such decision within two months from the said date, may appeal to a Special Appellate Tribunal, consisting of two Judges of the High Court

nominated from time to time by the Chief Justice in that behalf, provided that the Special Appellate Tribunal may, in its discretion, allow further time

not exceeding three months for the filing, of such appeal.

(2) The members of the Special Appellate Tribunal shall hear the appeal and on all points, whether of law or of fact, on which they are agreed in

their opinion, their decision shall be final. Where on any such point or points, the members are divided in their opinion, they shall state the point or

points on which they are so divided, and such point or points together with their opinion thereon, shall then be laid before one or more Judges

nominated for the purpose by the Chief Justice, and such Judge or Judges shall hear the appeal in so far as it relates to such point or points, and on

each point, the decision of the majority of the Judges, who have heard the appeal, including those who first heard it, shall be final.

(3) Subject to the decision on such appeal, the decision of the Tribunal shall be final and shall not be liable to be questioned in any Court of

law.....

The Special Appellate Tribunal authorised to hear appeals from the decision of the Tribunal consists of two Judges of the High Court nominated

from time to time by the Chief Justice in that behalf. That the Special Appellate Tribunal is not exercising the normal appellate jurisdiction of the

High Court is indeed quite manifest from the very terms of S. 7 of Madras Act XXX of 1956. Section 7, sub-section 2, reinforces this view when

it provides and prescribes a procedure for the disposal of the appeal in cases, where difference of opinion arises between the Judges hearing the

appeal. Such a provision would have been wholly unnecessary if the Special Appellate Tribunal were to be treated as the High Court itself in view

of the provisions contained under the Letters Patent. Vide Clause 36 of the Letters Patent:

..... and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any

point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be

equally divided, (they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other

Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first

heard it)"".

(4) Mr. K. S. Champakesa Aiyangar, learned counsel for the petitioner, referred to S. 109, C.P.C. He contends that under the terms of that

provision an appeal shall lie to the Supreme Court from any judgment, decree or final order passed on appeal by a High Court or by any other

court of final appellate jurisdiction. The submission of the learned counsel is that the Special Appellate Tribunal, if it cannot be called a High Court,

must at least be deemed to be a court of final appellate jurisdiction. It is true that in the absence of any inconsistency between the Constitution and

the Civil Procedure Code, the provisions of the latter can be invoked. In cases of conflict between Art. 133 of the Constitution.) and S. 109,

C.P.C., the former alone will prevail. Where there is no right of appeal under Article 133, the CPC cannot be read as a supplementary enactment

conferring such a right of appeal. But it is really unnecessary to pursue this matter further if the Tribunal cannot be called a court within the meaning

of S. 109 C.P.C.

(5) The distinction between Tribunals and Courts is well understood and has never been obscure. Tribunals are of various types, domestic, quasi-

judicial and administrative. Some of them, particularly, quasi-judicial Tribunals, have the "trappings of courts". But nobody can mistake them for

the courts of the land established by law. The hierarchy of judicial forums, civil and criminal, constituted by Legislature are courts. Tribunals also

are mostly creatures of statutes, but they are not part of the judiciary, whatever

affinity or resemblance they may bear to the normal courts of the land. The expression ""tribunal"" refers to a person or body, exercising judicial or quasi-judicial functions outside the regular judicial system. We are of opinion that the Special, Appellate Tribunal constituted under Madras Act XXX of 1956 cannot be called a Court of final appellate jurisdiction within the meaning of S. 109 C.P.C.

(6) It is not without significance that Art. 136 of the Constitution providing for the Supreme Court granting special leave to appeal is worded differently from Art. 133. Art. 136 reads,

(1) Notwithstanding anything in this Chapter, the Supreme-Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed "or made by any court or tribunal in the territory of India".

It is quite obvious that the power of the High Court under Art. 133 to grant leave to appeal is confined and restricted only. to judgment, decree or

final order in a civil proceeding of a High Court, and not of a Tribune). We may also refer to the definition of the High Court under General

Clauses Act, Act X of 1897, which of course does not govern the Constitution. S. 3(25) defines High Court as

High Court"" used with reference to civil proceedings shall mean the highest civil court of appeal (not including the Supreme Court) in the part of

India in which the Act or Regulation containing the expression operates. ""We have no hesitation in holding that in view of the statutory provisions

set out above the Special Appellate Tribunal under Madras Act XXX of 1956 is not the ""High Court.

(7) But Mr. Champakesa Alyangar contends that the Tribunal is composed of two judges of the High Court, and they exercise their functions qua

such Judges, and that though they may be labelled the Special Appellate Tribunal, they function only as High Court Judges, and their decision must

be deemed to be that of the High Court. Surely the character of the Tribunal cannot be altered by its personnel. An association of Judges of the

High Court invested with particular powers and jurisdiction outside the ambit of the High Court's jurisdiction cannot be called a High Court. That

position is amply borne out by judicial precedents of this Court.

(8) In In Re: Mr. Hayles, Editor of ""The Mail"" and Another, one of the questions

referred to the Full Bench was In these terms:

When a Judge of a High Court is appointed as a Tribunal under the Industrial Disputes Act, has he all the powers of a High Court Judge to punish persons for contempt under Art. 215 of the Constitution".

This was answered in the negative. It was held by the Full Bench that the adjudication of industrial disputes under the Industrial Disputes Act, 1947

is not within the jurisdiction of the High Court as such; that such jurisdiction is only conferred on the special statutory tribunals created by that Act;

that the proceedings before the Tribunal are not proceedings of the High Court even though the Tribunal is a single member one consisting of a

judge of the High Court. It was further held that even if it is judicial or quasi-judicial duties that the Judge of a High Court under. takes, if these

duties are unconnected with the jurisdiction of the High Court, the fact that he holds the office of a Judge of the High Court cannot make them part

of the functions of the High Court.

(9) This decision was followed by Rajagopala Aiyangar J. in Gordon Woodroffe and Company (Private) Limited Vs. S. Venugopal and Another, .

Dealing with this point, the learned Judge observes thus at page 175: (of Mad LJ). (at p. 441 of AIR):

The next contention urged by the learned counsel for the respondents in each of the two petitions was that as a learned Judge of this court had

been constituted the Industrial Tribunal it was virtually an order of a Judge of this court, that was being canvassed and, therefore, this court had no

power to interfere with such orders under Art. 226 of the Constitution. This contention, however, is concluded against the learned counsel by a

decision of a Full Bench of this court in In Re: Mr. Hayles, Editor of "The Mail" and Another, * * * I have therefore rid hesitation in overruling this

contention regarding the jurisdiction of this court under Art. 226 of the Constitution.

(10) In our opinion the preliminary objection raised ca behalf of the State is well founded and the petition is not maintainable. The petition fails and

is dismissed with costs.

(11) Petition dismissed.