
(1960) 04 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No's. 177 and 200 of 1960

Sivaswami Padayachi and others

APPELLANT

Vs

The Kassimiah Charities and others

RESPONDENT

Date of Decision : 06-04-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1
Constitution of India, 1950 — Article 226

Citation : (1960) 04 MAD CK 0026

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : R. Gopalaswami Ayyangar, K.N. Balasubramaniam and M.R. Narayanaswami, for the Appellant; V.K.T. Chari) The Addl. Govt. Pleader (Mr. M.M. Ismail) and Messrs. K. Rajah Ayyar, V. Seshadri and T.V. Balakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—The determination of the question, whether Aryapuram Thattimal is an estate to which the provisions of the Rent Reduction Act (Act XXX of 1947) would apply, and is an inam estate within the meaning of the Abolition Act (Act XXVI of 1946) has had a chequered history, the details of which it should be unnecessary to set out now. After the Madras Estates Supplementary Act XXX of 1956 came into force, that question came before the Tribunal at Tanjore, constituted under that Act in O. A. Nos. 11 and 14 of 1959 on its file. O. A. No. 14 of 1959 was an application presented by one of the landholders, Kassimiah Charities, under S. 3(1) of Act XXX of 1956. O. A. No, 11 of 1959 was a proceeding that stood transferred to the Tribunal under S. 11 of that Act. Pending disposal of these proceedings the landholders applied in I.A. Nos. 44 and 45 of 1960 for the appointment of a receiver to collect the rents from the tenants in possession of the lands. The tenants resisted these applications, the principal ground being that the Tribunal had no jurisdiction in proceedings under Act XXX of 1956 to order the appointment of a receiver. The Tribunal overruled those

objections and directed the appointment of a receiver. The tenants who were parties to O. A. No. 14 of 1959 preferred W.P.No. 200 of 1960, and some of those who were parties to O. A. No. 14 of 1959 preferred W. P. No. 177 of 1960 both under Art. 226 of the Constitution, for the issue of a writ of certiorari to set aside the order of the Tribunal dated 16th February 1960; The interlocutory applications in both the proceedings were disposed of by a common order, and since the main questions at issue are the same, I can dispose of both the writ petitions by a common order. In 1950 itself the Government issued a notification under the provisions of the Rent Reduction Act to reduce the rents payable by the tenants in possession. The validity of that notification was challenged in proceedings under Art. 226 of the Constitution and also in suits filed in civil Courts before Act XXX of 1956 came into force. It was common ground that no further action was taken on the basis of that notification, and the rents were not reduced. Nor did the Government collect any rent from the tenants in possession. In view of that position, the Government which was impleaded as a party to the proceedings before me under Art. 226 of the Constitution, took the stand that the Government was content to abide by the order of the Tribunal directing the appointment of a Receiver to collect the rents from the tenants in possession.

2. The learned Judge who constituted the Tribunal decided the question of jurisdiction with reference to the rules framed under the Abolition Act and not with specific reference to the analogous rules framed under Act XXX of 1956. That in no way really affects the determination of the question of jurisdiction.

3. Act XXX of 1956 itself was amended by Act XXXIV of 1958. S. 5(4) which ran-- "Every Tribunal shall have all the powers of a civil Court to compel the attendance of witnesses and the production of documents" was amended by Act XXXIV of 1958, and it now reads:

" Every Tribunal shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (Central Act V of 1908), when trying a suit or when hearing an appeal. "

4. The rules which were framed under Act XXX of 1956 before the Amending Act XXXIV of 1958 was passed, were not amended after Act XXXIV of 1958 came into force. R. 4 of Part IV of these Rules provided:

" Every Tribunal and every Special Appellate Tribunal shall have all the powers exercisable by a civil Court in the trial of suits and in appeals."

5. Rule 5 was :

" The proceedings of a Tribunal shall be summary and shall be governed, as far as practicable, by the provisions of the Civil Procedure Code, 1908. particular in regard to :

(a) the issue and service of summons,

- (b) the examination of parties and witnesses;
- (c) the production of documents;
- (d) the amendment of pleadings;
- (e) addition of parties;
- (f) the passing of ex parte orders and setting them aside for good causes;
- (g) the ordering dismissal for default of appearance and setting aside such orders for good cause;
- (h) the reviewing of orders passed on ground of apparent error; and
- (i) the passing of orders."

6. The main ground on which the validity of the order of the Tribunal dated 16th February, 1960, was challenged was, that the Tribunal had no jurisdiction to appoint a Receiver and that the provisions of O. 40, R. 1, C.P.C., did not apply to proceedings before the Tribunal under Act XXX of 1956. The question of jurisdiction has to be determined primarily on the basis of S. 5(4) of Act XXX of 1956, as it stands amended by Act XXXIV of 1958.

7. The learned Counsel for the petitioners contended that S. 6 of Act XXX of 1956 made it clear that the only issue to be decided by the Tribunal was whether a given area was and estate and/or an inam estate, and to the determination of that issue the powers vested in a civil Court under O. 40, R. 1, C.P.C., were not incidental, and therefore, those powers could not be invoked by the Tribunal. In my opinion that is not the test to apply to decide whether the power to appoint, a Receiver vested in a civil Court by O. 40, R. 1, C.P.C., is one of the powers conferred on the Tribunal by S. 5(4) of Act XXX of 1956.

8. The scope of the expression " trial " in an analogous statutory provision was considered by the Supreme Court in Harish Chandra Bajpai Vs. Triloki Singh, and the Supreme Court held that " trial " meant the entire proceedings before the Tribunal from the time the petition was transferred to it until the pronouncement of the award. If that test is applied, the expression " trial " in S. 5 (4) of Act XXX of 1956 should be construed to mean the entire proceedings before the Tribunal from the time it takes cognizance of an application under S. 3 (1) of the Act or from the time it takes cognizance of a claim that stands transferred to it under S. 11 of the Act, till it is decided under S. 6 of Act XXX of 1956.

9. The learned Counsel for the petitioners referred to R. 5 in Part IV of the rules framed under Act XXX of 1956, which I have set out above, and contended that the enumeration of these powers should make it clear that the provisions of O. 40, R. 1, C. P. C, were not made applicable to proceedings before the Tribunal. What R. 5 directed was that the proceedings of the Tribunal shall be governed as far as practicable by the provisions of the Civil Procedure Code, and in Cls. (a) to (i) particular set of provisions of the Procedure Code were set out. Enumeration

of these provisions in Cls. (a) to (i) was certainly not exhaustive of the powers conferred by R. 5. That the scope of the expression "particularly in regard to" was not exhaustive was the principle laid down by me in *M.K. Padmanabhan Vs. The State of Madras and Another*, and that was approved of by a Division Bench of this Court in *W. P. Nos.) 1224 of 1959 and 4 of 1960*. R. 5 is therefore no bar to the exercise of the powers vested In a civil Court by O. 40, R. 1, C. P. C.

10. As I said, the real question for determination is whether that power falls within the scope of S. 5(4) of the Act, as It now stands amended by Act XXXIV of 1951.

11. The learned Advocate General pointed out that the scheme of Act XXX of 1956 made it clear that certain legal consequences follow the determination of the question by the Tribunal, that a given territorial area was or was not an estate. S. 1(3) of Act XXX of 1956 provided for an application being made to the Tribunal even after the notifications had been Issued under the Rent Reduction Act and under the Abolition Act. If in such cases the Tribunal eventually decides under S. 6 of Act XXX of 1956 that a given village is not an estate or an inam estate, then the notifications issued earlier under the Rent Reduction Act and the Abolition Act would have no legal effect. If the Tribunal comes to the conclusion that the village is not an estate, any notification issued under the Rent Reduction Act would be of no effect, which means that any payment of rent to the Government in proceedings taken under the Rent Reduction Act would not constitute a valid discharge of the liability of the tenants in possession to the landholder. The learned Advocate General was therefore well founded in his contention, that it was not a case of a mere declaratory relief being granted by the Tribunal. It was not necessary in form to grant consequential reliefs. But the legal consequences were bound to follow a decision that a given village was not an estate, or that it was not an Inam estate.

12. But for Act XXX of 1956 the question, whether a given village was or was not an estate for purposes of the Rent Reduction Act, would have been cognisable in a civil Court. If such a suit had been filed in a civil Court, obviously it would have had jurisdiction to appoint a Receiver under O. 40, R. 1, C. P. C. Under Act XXX of 1956 the Tribunal has been given exclusive jurisdiction to decide that question, and it is the determination of that question that is equated to a suit by S. 5(4) of Act XXX of 1956. Recourse to the provisions of O. 40, R. 1, C. P. C, which is incidental to the trial of a suit in a civil Court, is, in my opinion, also incidental to the determination of the question at issue before the Tribunal under S. 6 of Act XXX of 1956. As I said, the determination of that question is equated to the trial of a civil suit by S. 5(4) of the Act.

13. The learned Counsel for the petitioners referred to *Rajendra Sing v. Umraprasad* 1937All. L.J. 1316, in support of his contention, that the Tribunal could not invoke the provisions of O. 40, R. 1, C. P. C. S. 5(4) of Act XXX of 1956 is not in part materia with the statutory provisions, the learned Judges had to consider in *Rajendra Singh v. Umraprasad* 1937 All. L.J. 1316. In that case they

pointed out that the rules did not enable recourse to the provisions of O.40, R. 1, C.P.C. and that even if they did, they would have been ultra vires and contrary to the Scheme of the Oudh Encumbered Estates Act. The scope of S. 5(4) of the Act XXX of 1956 and the scope of what constitutes "trial" will have to be decided with reference to the specific terms of S. 5(4) in the setting of Act XXX of 1956.

14. The learned Advocate General further submitted that independent of the provisions of S. 5(4) of Act XXX of 1956, the Tribunal could be viewed as a civil Court and the proceedings therein as civil proceedings to which the provisions of the CPC would apply, *proprio vigore*. The learned Advocate General contended that the principle laid down by the Privy Council in *Nilmon Singh Deo v. Taranath Mukherjee* 9 Cal. 295, would apply. I prefer not to express any concluded opinion of mine on the question whether that principle would apply, and whether the Tribunal constituted under Act XXX of 1956 could be viewed as a civil Court to which all the provisions of the CPC would apply.

15. In my opinion the Tribunal had jurisdiction to assume powers vested in the civil Court by O. 40, R. 1, C.P.C, and to appoint a Receiver pending the decision of the questions at issue in the proceedings before it under S. 6 of Act XXX of 1956.

16. The learned Counsel for the petitioners at one stage submitted that the appointment of a Receiver would amount to dispossession. The Receiver was appointed only to collect rents. No doubt at that stage he was directed to take charge of the harvest. The operation of that order was stayed. But even the direction as it stood did not amount to dispossession. The Tribunal had jurisdiction to appoint a Receiver to collect rents.

17. The learned Counsel for the petitioners next submitted that a direction to the Receiver to collect rents claimed by the landholder would be illegal and opposed to the provisions of the Rent Reduction Act. I have already pointed out that though a notification was issued under the Rent Reduction Act, no steps were taken to implement it, and the Government did not collect any rents. I have also pointed out that, if eventually the Tribunal comes to the conclusion that Aryapuram Thattimmal is not a village, it would mean that the notification issued under the Rent Reduction Act would be of no legal effect; the existence of that notification is not a bar, in the circumstances of this case to the appointment of a Receiver or to the issue of a direction to him to collect rents from the tenants in possession.

18. During the pendency of these proceedings in this Court interim orders were passed, and the harvest is now over. The question whether further interim arrangements ought to be made for collection of rents may come up for consideration only later. The rule nisi is discharged and the the petitions are dismissed. No order as to costs.