

(1951) 09 MAD CK 0040

In the Madras High Court

Case No : Civil Miscellaneous Petition No's. 11740 of 1950, etc.

Sri Raju V. Chandra Chudamani Dev Bahadur Varu and Others APPELLANT
Vs

Madras State and Others RESPONDENT

Date of Decision : 28-09-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Madras Estates Land (Reduction of Rent) Act, 1947 — Section 3, 3(2), 8
Madras Estates Land Act, 1908 — Section 3(2)

Citation : AIR 1952 Mad 589 : (1953) ILR (Mad) 47 : (1952) 65 LW 75 : (1952) 1 MLJ 206

Hon'ble Judges : Rajamannar, C.J.;Venkatarama Aiyar, J

Bench : Division Bench

Advocate : V. Vedantachariar, T. Rangaswami Aiyangar, T. Krishnaswami Aiyangar, K. Umamaheswaram, A. Kuppuswami, C.V. Dhikshitalu and K.V.K. Sarma, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—These applications are directed against, the orders issued by the Government u/s 3(2) of Madras Act XXX of 1947 reducing the rates of rent payable in respect of the estates of the several applicants. Two main grounds were taken in these applications, namely, (1) that Madras Act XXX of 1947 was "ultra vires" and in any event became void after the Constitution and (2) that the Act did not apply to the properties owned by the applicants because they did not fall within the definition of "estate" in Section 5(2) of the Madras Estates Land Act, I of 1903.

2. The first ground has since been disposed of by our judgment In "RAMAKRISHNA RANGARAO v. STATE OF MADRAS", C M P No. 894 of 1951 (Mad) etc. adverse to the applicants. The second ground remains.

3. The Act applies to all estates as defined in Section 3(2) of the Madras Estates

Land Act, 1908 (Section 1 (2)). The applicants deny that their properties fall within this definition. There is no provision in the Act itself under which any special Tribunal is appointed to decide a dispute as to whether a particular property is or is not an estate within the meaning of the Act. u/s 2 (1) of the Act the Provincial Government is given the power to appoint a special officer in any estate or estates for the purpose of recommending fair and equitable rates of rent for the ryoti lands in such estate or estates. The rents as finally approved by the Govt. are published in the Fort St. George Gazette u/s 3(2). It is obvious that if a particular property is not an estate, such property would not be governed by the provisions of the Act, and any order published by the Government u/s 3(2) of the Act would not be of any legal consequence or force.

The question is what is the remedy of the aggrieved owners of such properties when orders are published by the Government reducing the rates of rent in respect of them. In exceptional cases when on the face of the record or on admitted facts, it is clear that a particular property does not fall within the definition of an estate in Section 3(2) of the Madras Estates Land Act, 1908, this Court can quash the order of the Government passed u/s 3(2). But in the majority of cases it may not be possible for this Court with its limited scope of Jurisdiction under Article 226 of the Constitution to give relief to an applicant who alleges that his property does not fall within the definition. In such cases, the proper and adequate remedy would be by way of a suit. There can be no question that a suit to challenge the validity of an order of the Government made u/s 3 of the Act on the ground that the Act itself does not apply to the Property concerned would be maintainable. There is nothing in the Act itself ousting the Jurisdiction in this behalf. No doubt Section 8 of the Act says that the validity of an order made u/s 3(2) shall not be liable to be questioned in any Court of law. But such provision will never apply to a case where there is initial lack of power in the Provincial Government to take my proceeding under the Act. Before Section 8 can apply, there must be an order which could be held to be a lawful order passed under the Act. If it is an order passed under the colour of the Act, the provision cannot obviously apply.

4. It has been held over and over again that when executive authorities in exercise or under colour of a statutory power interfere with the property of a subject improperly and in excess of the limits authorised by law, the subject has a right to resort to the civil Court unless its jurisdiction has been taken away by express words or by clear implication. As their Lordships of the Judicial Committee observed in *SECRETARY OF STATE v. MASK & CO.*", ILR (1940) Mad 599 :

"It is settled law that the exclusion of the jurisdiction of the civil Courts is not to be readily inferred, but that such exclusion must either be explicitly or clearly implied. It is also well settled that even if jurisdiction is excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the

fundamental principles of judicial procedure."

The Act expressly applies only to certain subject matter. If anything falls outside that subject matter, then it follows that the Act cannot apply to such a thing. Even in such cases it may be when a special statutory tribunal has been created by the Act invested with power and jurisdiction to decide any dispute as to whether any particular property falls within or outside the Act then, the jurisdiction of the civil Court is to that extent ousted. But in this case, as already pointed out, there is no such special tribunal. A civil Court would therefore have the jurisdiction vested in it u/s 9, CPC to decide the question whether particular property is or is not an "estate" within the Act in a suit instituted by any aggrieved party.

5. A suit is the proper and adequate remedy under the circumstances, and as a rule an order under Article 226 would not be made when there is another proper and adequate remedy. These applications will therefore be dismissed. There will be no order as to costs. Under instructions from the Government, the Advocate General states that in case any of the applicants intends to file a suit the Government would waive their right to two months' notice u/s 80 of the Civil Procedure Code.