
(1969) 01 MAD CK 0024

In the Madras High Court

Case No : Civil Revision Petition No's. 1565 and 1799 of 1963, 962 of 1965 and 1297 of 1966

State of Madras and Others

APPELLANT

Vs

T.M. Oosman Haji and Co., Madras and Others

RESPONDENT

Date of Decision : 06-01-1969

Acts Referred:

Government Grants Act, 1895 — Section 3

Madras City Tenants Protection Act, 1922 — Section 1(3)

Citation : AIR 1970 Mad 27 : (1969) 2 MLJ 443

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

Bench : Division Bench

Advocate : Asst. Govt. Pleader and M.S. Sundararajan, for the Appellant; S. Parthasarathy, S.F. Rehman and T. Chengalavarayan, for the Respondent

Judgement

Sadasivam, J.—These civil revision petitions have been directed by the learned Chief Justice to be posted before this Division Bench as they

involve two questions of law of some importance, namely, whether Section 3 of the Government Grants Act of 1895 (originally called the Crown

Grants Act) prevails over the provisions of the Madras City Tenants Protection Act 3 of 1922, and whether the State of Madras is bound by the

provisions of the Madras City Tenants Protection Act unless this is expressly stated to. that effect in the Act.

2. These civil revision proceedings arise out of petitions filed by four timber merchants carrying on business in Basin. Bridge Road, Madras for

fixation of fair rent u/s 7 (a) of the Madras City Tenants Protection Act 1922. It is an undisputed fact that the lands on which the timber depots are

kept belong to the State of Madras and they have been leased out by the Corporation to the several timber merchants. The Government allowed

the Corporation to lease their lands in the Basin Bridge Road to timber merchants, subject to their approval, on the condition that 50 per cent of the rent realised should be paid over by the Corporation to the Government. The rents collected from the timber merchants were increased from time to time and finally, at the beginning of 1953, the timber merchants were informed that the lease would be renewed only on condition of their paying a rent of Rs. 50 per ground, though the Standing Committee of the Corporation itself had suggested only Rs. 35 per ground, posman Hajee and Co. and Messrs. S. N. Vijayaraghavachariar succeeded in the Courts below in invoking their jurisdiction for fixation of fair rent and the State has preferred C. R. P. 1565 and 1799 of 1963. But in the other two revision petitions filed by M/s. Sundarsanam Iyengar and Sons, the Courts below took the opposite view that the provisions of the City Tenants Protection Act cannot be invoked for fixation of fair rent, in respect of the lands owned by the Government.

3. It was urged on behalf of the State, in the Courts below that the Corporation of Madras acted only as the agent of the Government in leasing the lands. In the appeals preferred by M/s. Sudarsanam Iyengar and Sons to the City Civil Judge, Madras, there is a specific finding that the position which the Corporation occupies is only that of an agent subject to the control of the Government with regard to the acceptance of the terms of the lease." Even in the appeals preferred by the State of Madras against Oosman Hajee and Co. and M/s. Vijayaraghavachariar, the appellate Court has found in the penultimate paragraph of its judgment that "all that the Government order provides is that the Corporation was entitled as the "agent of the State of Madras to lease the properties in question on terms approved by the Collector," and it is in this view, the learned Principal City Civil Judge has considered the scope and effect of Section 3 of the Government Grants Act. Thus the finding of the lower appellate Court in all these cases that the Corporation acted as the agent of the Government in leasing the lands of the Government to the timber merchants is justified on the evidence on record and it correctly represents the jural relationship between the parties.

4. The common law of England is that the King's prerogative is illustrated by the rule that the Sovereign is not necessarily bound by statute law

which binds the subject. This is further reinforced by the rule that the King is not bound by a statute unless he is expressly named or unless he is

bound by necessary implication or unless the statute being for the public good, it would be absurd to exclude the King from it. It was pointed out in

Director of Rationing and Distribution Vs. The Corporation of Calcutta and Others, , that this was the law applicable to India also until the advent

of the Constitution. It has been held in the above decision that the rule of interpretation of statutes that the State is not bound by a statute, unless it

is so provided in express terms, or by necessary implication, is still good law. This was relied on and followed in State of West Bengal Vs. Union

of India, , State of Punjab Vs. Okara Grain Buyers Syndicate Ltd. and Others, and Sri Venkata Seetaramanjaneya Rice and Oil Mills and Others

Vs. State of Andhra Pradesh etc., . But in Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta, , the

above decision in Director of Rationing and Distribution Vs. The Corporation of Calcutta and Others, , was overruled and the minority view of

Wanchoo J. in that decision was approved. It has been held in that decision that the rule of construction that the King is not bound by a statute

unless he is expressly named or brought in by necessary implication, which was accepted by the Privy Council in interpreting statutes vis-a-vis the

Crown is inconsistent with and incongruous in the present set up and that in the context of modern notions of the functions of a Welfare State, there

is no sufficient reason to justify any distinction in the application of the rule of interpretation of statutes and that the general Act applies to citizens as

well as to State unless it expressly or by necessary implication exempts the State from its operation. It is pointed out in that decision that the State

can make an Act, if it chooses, providing for its exemption from its operation and that though the State is not expressly exempted from the

operation of an Act, under certain circumstances, such an exemption may necessarily be implied. This decision was followed in the later Supreme

Court decision in Union of India (UOI) Vs. Jubbi and Dunia, etc., , where it has been held that a statute applies to State as much as it does to a

citizen unless it expressly or by necessary implication exempts the State from its operation.

5. The Madras City Tenants Protection Act, as it originally stood, was applicable to the tenants in the City of Madras and there is a provision in

the Act as amended by Madras Act 19 of 1955 to extend it to other Municipal towns, and specified villages within five miles from the city of

Madras, or municipal towns, by Government notification. In 1960, a proviso was added to Section 1 (3) of the Act empowering the tenancies of

lands owned by the Corporation of Madras in the City of Madras and certain other public bodies, such as the Municipal Council, Panchayat

Union, District Board and Board of Trustees constituted under the Madras City Improvement Trusts Act. But there is no such exemption in the

case of lands owned by the Government.

6. The decision of Ramakrishnan. J. in W. P. 45 of 1961 (Mad), Murugesan v. Collector of Madras throws some light on this aspect of the case.

It related to proceedings taken by the Government under the Land Encroachment Act to evict dwellers of huts mainly occupied by employees in

the Harbour in the locality called Kanniappa Nagar colony, in pursuance of a scheme to provide for an alternative space for their occupation, as

the Government land was required for the purpose of the Port Trust to extend the harbour. The hut dwellers of Kanniappa Nagar colony relied on

the acts of the Corporation and the Government as showing that their occupation of the huts was authorised and claimed the benefit of the

provisions contained in the City Tenants Protection Act. The fact that when the proviso to Section 1 (3) of the Act was added in 1960 no attempt

was made to give any similar protection to Government land, was relied on to show that the City Tenants Protection Act could not be invoked in

respect of Government lands, The learned Judge has observed that the reason for the amendment was to extend the benefit which the Crown

enjoyed not only by virtue of the common law principle of saving Crown lands from the operation of the statute, but also by reason of the specific

provisions of the Govt. Grants Act 1895, to the lands of the Corporation and certain other authorities. It is true that in so far as this decision relies

on Director of Rationing and Distribution Vs. The Corporation of Calcutta and Others, , the authority has been shaken by the subsequent decisions

referred to above. But the interpretation of Sections 2 and 3 of the Government Grants Act, 1895 given in that case supports the contention of the

learned Government Pleader.

7. The decision in these petitions depends on a proper construction of Section 3

of the Government Grants Act. If the terms of the grant by the Government by way of leases of their lands through the Corporation are to take effect according to their tenor by virtue of Section 3 of the Government Grants Act, notwithstanding any law, statute, or enactment to the contrary, the City Tenants Protection Act cannot be invoked by the tenants for the fixation of fair rent. The preamble of the Government Grants Act gives an indication as to the scope and purview of the Act and it can be looked into to correctly understand the provisions of the Act. The Government Grants Act was passed not only to settle the doubts which had arisen as to the effect of the Transfer of Property Act, 1882, but also, to remove any doubts with regard to the power of the Government to impose limitations and restrictions upon grants and other transfers of lands made by it, or under its authority. Section 2 of the Government Grants Act deals with exemptions as regards the Crown Grants from, the provisions of the Transfer of Property Act, 1882, and thus it gives effect to the first object mentioned in the preamble. Section 3 of the Act provides that Crown Grants should take effect according to their tenor, notwithstanding any law to the contrary. There is no need for any such provisions if the law referred to in Section 3 is only the Transfer of Property Act. In *The Secretary of State for India in Council Vs. Mahaboob Sir Frazvant Sri Raja Parthasarathy Appa Rao Savai Aswarao Bahadur Zamindar Garu and Others*, it is observed that "looking at the preamble and considering the purpose of the Act it cannot be doubted that the Act was rather declaratory in its nature than enabling or enacting", that it has to be enacted so says the preamble, because doubts had arisen as to the extent and operation of the Transfer of Property Act, 1882, and that "taking the terms of the Crown Grants Act, the inference seems to be irresistible that prior to the Transfer of Property Act there was no doubt whatever as to the power of the Crown to make a transfer of property in any terms, or under any of the conditions whatsoever.

8. *Haji Mahammad Nasaruddin Khan Bahadur v. Egambara Mudaly*, (1907) 2. Mad LT 55 relates to a case where the Crown made a grant of a village for the maintenance of a tomb. It was held in that decision that having regard to Section 3 of the Crown Grants Act, the validity of the grant could not be questioned on the ground that it created an estate not recognised

by the Muhammadan law. In *Moosa Kutti v. Secretary of State*, ILR Mad 65 : AIR 1920 Mad 413 a Bench of this Court has held that under Sections 2 and 3 of the Crown Grants Act, the Government has power to impose restrictions in a lease made by it a power which is not affected by the provisions of the Malabar Compensation for Tenants Improvements Act. In *Ullattuthedi Choyi Vs. The Secretary of State for India in Council*, the above decision has been followed and it has been held that ""where under the terms of a lease granted by the Crown the lessee agrees to surrender the demised property on six months" "" notice, he cannot resist a suit in ejectment by the Crown after the requisite notice, on the ground that he must be paid the value of his improvements under the Malabar Compensation for Tenants Improvements Act"" In *S. Murugesu Gramani Vs. The Province of Madras*, it has been held that the Crown Grants Act prevails over the City Tenants Protection Act and that being so, the terms of the grant of lease given by the Government to the appellant in that case have to be enforced.

9. There are decisions of other High Courts also with regard to the interpretation of Section 3 of the Government Grants Act to the same effect. In *Gaya Prasad Vs. Secy. of State*, it has been held that in respect of a Crown grant the Crown is not bound by any of the sections of the Tenancy Act or the Transfer of Property Act or the Contract Act and that regard must be had by the courts to the terms of the grant. This decision throws light on the construction of Section 3 of the Crown Grants Act. The appellant in that case had purchased the property originally owned by the Government from the grantee and contrary to the terms of the grant made by the Government, he put up a construction after obtaining a licence from the municipality. It was urged that the Municipality acted as the agent of the Government and that the Government was bound by the act of the Municipality and reliance was placed on Section 188 of the Contract Act. It was held that the section of the Contract Act on which the appellant relied had no binding effect on the Government for the simple reason that it could not override Section 3 of the Crown Grants Act. In *The State of Andhra Pradesh Vs. Gathala Abhishekam and Others*, it has been held that the effect of Section 3 of the Government Grants Act is that when a grant has been made by the Government, it is not. with reference to

that grant, bound by any of the sections of either the Tenancy Act or the Transfer of Property Act or the Contract Act, or any other law for the time being in force and it, therefore, follows that any grant made has to be construed in accordance with the tenor of the grant and the grant will certainly be regulated in accordance with such tenor.

10. We shall proceed to consider whether the decision of the Judicial Committee in AIR 1946 127 (Privy Council) which has been referred to with

approval in *The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others*, has taken away the authority of the above decisions. The

relevant passage in the decision of the Privy Council at page 34 (of Mad LJ) = (at p. 131 of AIR) is as follows-

Their Lordships ought to refer in passing to the Crown Grants Act 1895 of which Section 3 was relied on by the appellant. That section runs: "All

provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid (i.e., one made by the Crown) shall be

valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

These general words cannot be read in their apparent generality. The whole Act was intended to settle doubts which had arisen as to the effect of

the Transfer of Property Act 1882 and must be read with reference to the general context and could not be construed to extend to the relations

between a Sanad-holder and his tenants. Still less could they be construed to limit the statutory competence of the Provincial Legislature under the

Constitution Act.

It is clear from the above passage that, their Lordships of the Privy Council in passing referred to Section 3 of the Crown Grants Act. Their

observations should be read in the light of the decision in that case. The appellant in that case put forward a claim that the U. P. Tenancy Act 1939

is ultra vires of the Provincial Legislature. He claimed that the Act created rights and interests in land in favour of persons other than the grantee

contrary to the Sanad granted by the Crown in favour of his predecessor-in-title and thus derogated from the terms of the Crown grants because it

modified or curtailed the rights conferred by the Crown. Thus the real question involved in that case was about the competence of the Legislature

to enact laws which would affect a Crown grant. In *Azizus Subhan Vs. Union of*

India (UOI) and Others, it has been held that Section 3 of the Crown Grants Act has no overriding effect on Section 3 of the West Bengal Estates Acquisition Act and that a competent Legislature can legislate so as to vary the effect of a Crown grant and that Section 3 of the Crown Grants Act cannot limit the statutory competence of a State Legislature to legislate on a subject assigned to it by the Constitution. The principle is illustrated by the Zamindari Abolition Act and similar legislation.

11. The Privy Council referred to the first part of the preamble that it was intended to settle doubts which had arisen as to the effect of the Transfer of Property Act and stated that the general words of Section 3 could not be read in their apparent generality and must be read with reference to the general context and could not be construed to extend to the relation between a sanad holder and his tenants. Thus as between the Government and the grantee, the terms of the grant would prevail notwithstanding any other law to the contrary. It is true, as pointed out in the said Privy Council decision and the Calcutta decision just referred to that Section 3 of the Government Grants Act cannot be construed as to limit the statutory competence of the Provincial Legislature under the Constitution Act. This a legislature can by express words, or by necessary implication, take away the effect of Section 3 of the Government Grants Act while enacting a particular legislation. But for Section 3 of the Government Grants Act, the Madras City Tenants Protection Act would apply to tenancies in respect of Government lands. The express provision contained in Section 3 of the Government Grants Act, taken along with the absence of any provision in the Madras City Tenants Protection Act extending the Act to Government lands, either expressly or by necessary implication, can only lead to one inference, namely, that the provisions of the Madras City Tenants Protection Act cannot be invoked contrary to the terms of the Government grants.

12. It is true in the decision in The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, , the relevant passage of the Privy Council decision construing Section 3 has been quoted with approval. But we have already explained the scope of the decision in the Privy Council case. The respondent in the above Supreme Court case claimed immunity from assessment by virtue of a transfer made by the Government in favour of

his predecessor in title. The lands were originally acquired by the Government for the purpose of the B. B. C. I. railway under the provisions of the

Land Acquisition Act and as they were no longer required for the purpose of the railway, they were sold by the Governor General to the

predecessor-in-title of the respondent. The contention in that case was that as the grant is of a freehold estate without any reservation, it must, to

take effect according to its tenor, be construed as granting exemption from assessment to revenue. It is held in that decision that Section 3 of the

Crown Grants Act must be construed in the light of the preamble and so construed, it cannot have any bearing on the rights of the parties, it is

further pointed out in that case that the section only enacts that "all provisions, restrictions, conditions and limitations over" in any grant or transfer

shall be valid and take effect according to their tenor and that what is relied on is not any "provision, restriction, condition or limitation over" in the

relevant document Ex. A-1 which according to its tenor entitles the respondents to hold the lands rent-free, but the absolute character of the

interest conveyed under Ex. A and therefore, Section 3 does not in terms apply. The deed in that case conveyed the lands to the purchasers

absolutely "with all rights, easements and appurtenances whatsoever" to be held "for ever" as in the case of conveyance of land in fee simple. It did

not however, recite that they are to be held revenue-free. Thus the observation of the Privy Council in AIR 1946 127 (Privy Council) cited with

approval in the Supreme Court decision, cannot be taken as throwing any doubt on, the correctness of the decision of this Court; and the other

Courts as regards the scope of Section 3 of the Government Grants Act.

13. The terms of Section 3 of the Government Grants Act can certainly be relied on as specifically exempting Government Grants from the

operation of Madras City Tenants Protection Act in the absence of any provision, either express or implied, extending the Act to Government

grants. We are inclined to agree with the view of Ramkrishnan, J. in W. P. No. 45 of 1961 (Mad) that in view of Section 3 of the Government

Grants Act, the local legislature did not deem it necessary to include Government grants while amending the Act by introducing the proviso to

Section 1(3) of the Act giving exemption to lands of the Corporation and certain other public bodies.

14. The learned Government Pleader brought to our notice the unreported decision of Natesan, J. in S. A. No. 482 of 1964 (Mad), Nallanna

Gounder v. Muthuswami Gounder, where a different view of Section 3 of the Government Grants Act was taken in deciding whether the State can

claim immunity and exemption from the provisions of the Madras Cultivating Tenants Protection Act in respect of agricultural lands of the

Government by virtue of Section 3 of the Government Grants Act. In the case before the learned Judge, a lessee of agricultural land from

Government sought to rely upon the provisions of the Madras Cultivating Tenants Protection Act and the State met it by putting forward a claim to

immunity and exemption from the provisions of that Act, by reason of the Government Grants Act. The learned Judge held, firstly, that the plaintiff

in the suit would be a cultivating tenant within the meaning of the Madras Cultivating Tenants Protection Act and that if the Act should apply, he

could not be evicted from his holding. The State was undoubtedly the landlord and but for the claim to immunity by reason of the Government

Grants Act, Section 3 of the Madras Cultivating Tenants Protection Act would afford protection to the tenant against eviction. The learned Judge

examined the provisions of the Government Grants Act. He referred to the decisions already cited by us earlier in this judgment. He cited the

observation of the Privy Council in AIR 1946 127 (Privy Council) that the words in Section 3 of the Government Grants Act "cannot be read in

their apparent generality" and the observations of the Supreme Court in The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, .

The learned Judge construed the observation that the general words in Section 3 cannot be read in their apparent generality to mean that the scope

of Section 3 of that Act was limited.

It seems to us that the observations both of the Privy Council and the Supreme Court cannot be divorced from the context in which they were

made. In the Privy Council decision, the validity of the United provinces Tenancy Act, as enacted by the Provincial Legislature was questioned in

so far as it affected the rights conferred upon a grantee under a sanad. The contention then was that since under the terms of the grant it was open

to the sanad-holder to deal with the land and the tenancy as he liked, the impugned legislation, in so far as it interfered with his right to deal with his

tenants in any way was contrary to the terms of the grant. The Judicial Committee pointed out that the legislative power could not be attacked and the statute regulating the relations between the landlord and the tenant though It might affect or diminish the rights which the landlord possessed earlier, did not in any way run contrary to Section 3 of the Government Grants Act. By making a grant of that description, the legislature did not deprive Itself of any power to legislate within the scope of its authority, and the contention that by reason of the sanad, the pre-existing relations between the sanad-holder and his tenants could not be interfered with by legislation of this kind was repelled, and it is in that context that the Judicial Committee observed that the words of Section 3 of the Government Grants Act should be read with reference to the context. Nor do the observations of the Supreme Court in the next case referred to above lead to a different conclusion. After quoting the passage from the Supreme Court decision, Natesan, J. proceeded to say that ""the Government Grants Act thus being unavailable, the State ought to stand on the archaic prerogative and immunity of the Crown from the operation of the statute"" and proceeded to consider whether under the general law the Crown was not bound by any statute, unless the statute expressly or by clear implication so bound it.

We are unable to subscribe to the view taken by our learned brother that the Government Grants Act became "unavailable" solely by reason of the observations of the Privy Council and the Supreme Court. We have already pointed out that under the law as it stands at present, the State is bound by any legislation, unless it is expressly or by necessary implication excluded from the operation of that statute. Undoubtedly, there Is such a piece of legislation, that is, the Government Grants Act, which does expressly exclude the Government from the operation of statutes in relation to certain matters covered by that piece of legislation. In effect, the view of Natesan, J. would appear to be that the two decisions, that of the Privy Council and of the Supreme Court have virtually destroyed the basis of the Government Grants Act, and that in so far as transactions dealt with by that Act are concerned, the Government by reason of the provisions contained in that Act cannot claim immunity from the operation of any other statute. We are unable to agree in the view taken by our learned brother that the earlier decisions of this Court in S. Murugesu Gramani Vs. The

Province of Madras, and Ullattuthedi Choyi Vs. The Secretary of State for India in Council, and ILR Mad 65 : AIR 1920 Mad 413 may not be

good law after the decisions of the Judicial Committee and the Supreme Court cited above. Neither expressly nor by necessary implication does

the Government Grants Act either stand repealed or has fallen into obsolescence.

We hold that it is open to the State to put forward successfully the contention that the express stipulation found in the terms of the grant, such as

that the lessee should surrender possession after the expiry of the term of demise etc. can take effect, notwithstanding the provisions of the Madras

Cultivating Tenants Protection Act It is also our view that it is not necessary for the Madras City Tenants Protection Act to contain any provision

excluding the State from the operation for such an exclusion from the operation of any particular enactment may, be found in a different enactment

covering the same field. In so far as the Madras City Tenants Protection Act provides for the control over the eviction of cultivating tenants, though

the relevant section excluding its operation in the case of lands belonging to certain specified bodies are concerned does not expressly refer to the

exclusion of lands belonging to the State the Government Grants Act confers that exclusion.

15. We therefore, find that Section 3 of the Govt. Grants Act prevails in the instant cases and the State is therefore, not bound by the provisions of

the City Tenants Protection Act. It should follow that the fair rent petitions filed by the respondents in C. R. P. 1565 and 1799 of 1963 and the

petitioners in C. R. P. 962 of 1965 and 1297 of 1966 in the City Civil Court are not maintainable against the landlord, the State. They are

accordingly dismissed, but in the circumstances, there will be no order as to costs.