
(1956) 09 MAD CK 0029

In the Madras High Court

Case No : Writ Appeal No's. 39 and 43 of 1955

State of Madras

APPELLANT

Vs

Kassimia Charities Rajagiri and Others

RESPONDENT

Date of Decision : 03-09-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Madras Estates Land Act, 1908 — Section 3(2)

Citation : AIR 1957 Mad 361 : (1957) 70 LW 84

Hon'ble Judges : Rajamannar, C.J.; Ramaswami, J

Bench : Division Bench

Advocate : Special Govt. Pleader, for the Appellant; K. Rajah Aiyar, R.V. Seshadri, K.S. Desikan and K. Raman, for the Respondent

Final Decision : Allowed

Judgement

Rajamannar, C.J.—These are two writ appeals from the judgment of Rajagopalan J. quashing the proceedings taken by the State of Madras

under Madras Act 50 of 1947, with regard to the respondent's lands in Tanjore District. The Government proceeded on the basis that these lands

fell within the definition of an estate contained in Section 3(2) of the Estates Land Act, took, action under Act 30 of 1947, and reduced the rents

payable by the tenants on these lands.

Rajagopalan. J, before whom the petition of the respondent under Article 226 of the Constitution came on for disposal, dealt with the question of

fact whether the lands did or did not form an estate within the meaning of Section 3 (2) of the Estates Land Act, and in arriving at a conclusion on

this question relied upon the statements in affidavit filed in the case and certain documents which were produced by the Government.

The tenants who were vitally interested were represented by an advocate. The learned Judge on a consideration of some of the documents

produced by the Government came to the conclusion that the grant, was of portions of two villages and, the lands did not constitute a whole village

to satisfy the definition of Section 3 (2) (d) . On this finding he allowed the petition and quashed the proceedings of the Government under Madras

Act 30 of 1947. Hence " W. A. No. 39 of 1955 by the Government and W. A. No. 43 of 1955 by the tenants.

2. Before Rajagopalan J. the learned Government Pleader urged that the question whether the lands belonging to the respondent constituted an

estate need not be determined in writ proceedings and submitted that the learned Judge should refer the parties to a suit. The learned Judge

confessed that in the normal course he would have exercised his discretion as suggested by the Government Pleader and referred the parties to a

suit but having regard to the fact that the "proceedings had been pending in this Court for about 2 1/2 years and because he thought that all the

material the parties were able to gather were placed before him and because the question was argued at length he was of opinion that he should

not refer the parties to a suit. The learned Government Pleader once again pressed before us this aspect. We see considerable force in his

suggestion.

After listening to all that Mr. Rajah Aiyar, learned counsel for the respondent could say in the matter, we are clearly of opinion that the just and

equitable course from the point of view of all parties concerned would be to refer the aggrieved party to a suit. In the first place we do not think

that a writ petition should be converted into practically an original suit and questions of fact should be determined on a consideration of

documentary evidence as in an original suit. In the second place the normal and more satisfactory course would be the institution of a suit in which

the parties can adduce all available evidence and there would be a judicial consideration of all the evidence adduced and findings would be arrived

at, which in their turn could be canvassed, if necessary, in a Court of appeal, if not in more than one Court. Article. 226 of the Constitution cannot

be invoked to convert a petition under it into a regular suit.

3. Without going into the merits, we allow the appeals and set aside the order of

the learned Judge and refer the respondent, the, aggrieved party,
to a suit. There will be no order as to costs. Government shall waive notice u/s
80 of the Code.