(1922) 11 MAD CK 0029

In the Madras High Court

V. Parthasarathy Aiyangar and Others APPELLANT

Vs

Doraiswami Naicker and Another RESPONDENT

Date of Decision : 15-11-1922

Acts Referred:

Madras City Tenants Protection Act, 1922 — Section 9

Citation : AIR 1923 Mad 308 : (1923) ILR (Mad) 823 : (1923) 44 MLJ 91

Hon'ble Judges : Venkatasubba Rao, J;Spencer, J

Bench : Full Bench

Judgement

Spencer, J.—The question referred to us is whether a tenant in occupation of trust lands belonging to a temple or. mosque can enforce a

compulsory sale u/s 9 of the Madras City Tenant''s Protection Act and require the temple or mosque to deliver the land to him on a valuation to be

made by the court.

2. There is no difficulty to my mind in including the trustees of temples mosques and other religious endowments within the definition of ""landlord"" in

Section 2 of Madras Act No. 111 of 1922 as they certainly are persons entitled to collect the rent of the'' land on behalf of another person. A

greater difficulty arises when we come to consider Section 9. This section pr vides for the compulsory sale by a landlord of land in the possession

of atenant in the City of Madras from which the tenant ""sough to be ejected in a suit instituted under the Presidency Small land as the interest of the

landlord in the land and all other-interests which he can convey under any power What are the interests which he can convey under any power? If

they s.gmfy easements and other subsidiary interests, it would have been easy for the Act to so describe them. If the title to the land is intended to be included, has a trustee power to convey it? In Palaniappa Chetty v. Sreemalh DevasLhmoney PandaraSannadht 33 M. L. J. 1 (P.C.) the

Judicial Committee quoting the words of Lord Justice Knight Bruce in Hanooman Persaud Pandy v. Mmsammat Babooee Munraj Koonwaree

(1856) 6 M. I. A. 393 observe"" the power of the Manager for an infant heir to charge an estate not his own is under the Hindu Law a limited and

qualified power It can only be exercised rightly in a case of need, or for the benefit of the estate"". And at page 716 quoting Sir Montague E.

Smith''s words they say; ""There is no doubt that as a general rule of Hindu Law, property given for the maintenance of religious worship and of

charities connected with it is in alienable"" They then proceed to consider what kind of"" benefit will justify an absolute alienation of temple property

Among benefits to an estate they include the preservation of the estate from extinction the defence against hostile litigation affecting it, the

protection of it from injury or deterioration. These and such like things they say would obviously be benefits. In Bawa Magniram Sttaram v.

Kasturbai Manibhai (1921) 49 I.A. 54 there is an observation. ""The disability of a shebait to make a permanent grant is not absolute."" A trustee

then, like the guardian of an infant, has power to convey portions of the corpus of trust property under circumstances of necessity or where the

conveyance will be for the benefit of the estate. As the Act which we are considering creates a statutory necessity for landlords to sell portions of

their land where the conditions fulfil the terms of the Act, it may be argued that even trustee landlords are under the necessity of selling land to their

tenants as provided in Section 9. A similar statutory necessity arises when land is acquired by Government under the Land Acquisition Act.

Section 31 of that Act speaks of persons ""having a limited interest in land and provides for cases where there is ""no person competent to alienate

the land."" Section 32 also speaks of certain persons as having ""no power to alienate"" lands acquired under the Act, In Kamini Debi v. Pramatha

Nath Mookerjee I.L.R.(1911) Cal. 33 . Mookerjee, J. observes that trustees will come under the category of persons who have ""no power to

alienate"" land dedicated to an idol or to religious and charitable purposes. In this Presidency also it is the practice to apply these sections whenever

land belonging to temples and mosques is acquired for public purposes. But Section 32 provides a safeguard for the preservation of the money awarded as compensation by directing that it shall be invested in the purchase of other lands and meanwhile deposited or invested in some

approved securities. Madras Act III of 1922 does not contain any such safeguard. The presumption, therefore, is that the Legislature did not

intend to so endanger the preservation of trust properties as to include them under the definition of ""land"" which can be conveyed ""under any

power"". I am, therefore, of opinion that the question referred to us should be answered in the negative.

Venkatasubba Rao, J.

3. I entirely agree.

4. The question to be determined in this reference is whether a tenant can compel a trustee of a temple u/s 9 of the Madras City Tenants''

Protection Act, Madras Act No. Ill of 1922, to sell him the land on which the tenant has constructed a building. The point has been referred for the

opinion of the High Court by the Judge of the City Civil Court, Madras, who states that more than a hundred ejectment suits are now pending

disposal in respect of land belonging to a temple or a mosque or other charitable or religious trust and that he entertains considerable doubt

regarding the interpretation of the word '' land in Section 9 of the said Act.

5. The object of the Act is stated to be to give protection to tenants who in many parts of the City of Madras have constructed buildings on other''s

lands in the hope that they will not be evicted so long as they pay a fair rent for the land.

6. Section 3 provides that every tenant shall on ejectment be entitled to be paid as compensation the Value of any building erected upon the land.

7. Section 4 enacts that, in a suit for ejectment in which the landlord succeeds, the court shall ascertain the amount of compensation payable u/s 3,

and direct that, on payment by the landlord of the amount so found due, the tenant shall put the landlord into possession of the land with the

building thereon,

8. It will be seen that the effect of Sections 3 and 4 is that the landlord becomes on payment of a price the owner of the tenant''s building.

9. Section 9 provides for cases where tenants are not anxious to obtain compensation for the buildings, but on the contrary are desirous of

obtaining the land on which the buildings stand. It enacts that any tenant, who is entitled to compensation u/s 3 and against whom a suit in ejectment

has been instituted, may apply to the court for an order that the landlord shall be directed to sell the land for a price to be fixed by the court. The

court shall then fix the price and shall order that the tenant shall pay into court the price so fixed. On payment of the price the court shall pass a final

order directing the conveyance of the land by the landlord to the tenant. u/s 9, therefore, the tenant instead of parting with his building, becomes the

owner of the land on which the building has been constructed.

10. The term ''landlord'' is defined by Clause 3 of Section 2. ""Landlord"" means any person owning any land, and includes every person entitled to

collect the rent whether on his own account or on behalf of another person or by virtue of any transfer from the owner or of any order of a

competent court or of any provision of law.

11. The definition is comprehensive enough to include trustee of a charitable endowment. I may state that a farmer of rents, a usufructuary

mortgagee, a receiver appointed by court, a committee of a lunatic or a guardian of a minor would undoubtedly come within the definition. But the

difficulty is created by the explanation to Section 9. It runs thus: '' Land'' means the interest of the landlord in the land and all other interests which

he can convey under any power"". A person absolutely owning the land can convey it, but what is the interest that can be conveyed in the case of a

person who is entitled to an interest short of absolute ownership? If a lease is granted by a usufructuary mortgagee or by a lessee for a term of

years, if either of them files a suit against a tenant who has erected a building, it cannot possibly be contended that by a conveyance u/s 9 a higher

right can pass to the tenant than is possessed by the mortgagee or the lessee, the plaintiff in the suit. But there is a class of landlords who occupy a

position very different from that occupied either by absolute owners or persons with admittedly a very limited right in the property such as lessees

for a term of years or usufructuary mortgagees, To take only a few cases, managers of joint undivided Hindu families, Hindu widows, trustees of

temples or other religious endowments, and guardians of minors would fall in this category. There are no words in the Act which indicate the

intention of the legislature in regard to these various classes of landlords. It is indeed strange that an Act, whose assumed object is to afford protection to tenants should be silent on matters so vital as this. On behalf of the tenants it has been argued before us that we must presume that the

legislature intended to protect tenants irrespective of considerations that have reference to the extent of interest possessed by the landlords in the

land leased. I do not think we would be justified in presuming anything of the kind. We must gather the intention of the Act, if possible, from the

words used.

12. What is the meaning of the words ''under any power,'' used in Section 9? The word '' power'' occurs both in Indian Acts and decisions of the

Judicial Committe of the Privy Council and of various courts in India. Confining my observations to the case of trustees, I may first refer to

Prosunno Kumari Debya v. Golab Chand Baboo 1877) 2 I.A. 145 where Sir Mentague E Smith in delivering the judgment of their Lordships,

observes:"" But notwithstanding that peoperty devoted to religious purposes is, as a rule, inalienable, it is, in their Lordships'' opinion, competent for

the shebait of property dedicated to the worship of an idol to incur debts and borrow money for the proper expenses of keeping up the religious

worship, repairing the temples or other possessions of the idol, defending hostile religious attacks and other like objects. The power, however, to

incur such debts must be measured by the existing necessity for incurring them. The authority of the shebait of an idol''s estate would appear to be

in this respect analogous to that of the manager for an infant heir"".

13. Regarding the power of the manager for an infant heir, the observations of Lord Justice Knight-Bruce in Hanooman Persaud''s case, 1 are

quoted. ""The power of the manager for an infant heir to charge an estate not his own is, under the Hindu Law, a limifed and qualified power. It can

only be exercised rightly in a case of need or for the benefit of the estate"".

14. In Palaniappa Chetti v. Daivasikhamani (1856) 6 M.I.A. 393 the power of a trustee to grant a permanent lease of temple lands was

considered. Their Lordships of the Judicial Committee held that, unless a trustee is constrained thereto by unavoidable necessity or any benefit

accrued to the charity, he cannot grant a lease in perpetuity of debuttar lands at a fixed rent. They observe that it is impossible to give a precise

definition of ""benefit to the estate"", but they indicate that the preservation of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation would be benefits.

15. Referring to Hanooman Persaud''s case 1 their Lordships observe, ""In that particular case in reference to which this language was used, the

''necessity'' for the loan would appear to have been plain and imperative, the benefit to the estate, the preservation of its existence, obvious.

16. This and similiar passages in the judgment will make it clear that the word ''benefit'' is used in this context in a special sense.

17. In the course of the judgment their Lordships further observe that it is a breach of duty on the part of a shebait in the absence of necessity or

benefit to grant a lease in perpetuity at a fixed rent.

18. An argument was advanced before the Judicial Committee that the charity will be benefitted by a transaction which put at the shebait''s

disposal a sum of money capable of being profitably used. Their Lordships say that no authority has been cited giving any countenance to the

notion that a shebait is entitled to sell debottar lands solely for the purpose of investing the price so as to bring in an income larger than that derived

from the probably safer and certainly more stable property, the land itself.

19. These principles have not in the slightest degree been departed from in Bava Magniram Sitaram v. kasturbhai Manibhai (1921) 49 I.A. 54

where it was held that the disability of a shebait to make a permanent grant is not absolute and that although the manager for the time being has no

power to make a permanent alienation in the absence of proved necessity, yet the existence of justification may be presumed from the long lapse of

time between the alienation and the challenge of its validity. In that particular case there was an interval of a hundred years between the date of the

alienation and the date of the challenge of its validity.

20. It is not necessary to refer to further decisions on this subject and it may be taken to be settled law that the power of a trustee of temple

property is limited and that an alienation by him in the absence of necessity or benefit will not be upheld.

21. This being the state of the law, what do the words ''under any power'' in Section 9 connote? Can it be said that the trustee can convey the

interest which he can convey only when necessity exists or when the alienation is for the benefit of the estate?

22. In other words, if the construction urged on behalf of the tenants is adopted, the explanation to Section 9 will be equivalent to this: Land means

the full interest which a trustee can convey under the power possessed by him to convey trust property when necessity exists or the alienation is for

the benefit of the estate.

23. I do not think that this construction can be adopted. It has been argued that there is a statutory liability imposed in virtue of the Act itself upon

trustees to convey the land and that this constitutes sufficient necessity to justify an alienation. I his argument begs the question because the point to

be decided by us is--Does the Act impose such a statutory liability?

24. The decisions bearing upon the interpretation of the word ''power'' used in various Acts such as the CPC and the Insolvency Act give us very

little assistance in understanding the expression ''under any power'' in Section 9. I may refer to Fakir Chand Mothi Chand v. Mothi Chand Jurreck

Chand I.L.R(1883) . 7 Bom. 438 which deals with the power vested in the Official Assignee to dispose of the insolvent''s son''s interest in

ancestral property for the payment of his debts and two other similar cases, Rangayya Chetty v. Thanickachala Mudah ILR (1895) Mad. 74 and

Nunna Setti v. Chidara Boyina ILR (1902) Mad. 214 , I may also refer to Jagabhai Lalu Bhai v. Bhukandoss Jagivandoss ILR (1886) 11 Bom 37

which refers to the expression in Section 266 of the CPC (Act XIV of 1882) ""has a disposing power which he may exercise for his own benefit.

25. The provisions of the Land Acquisition Act I of 1894 seem to me to furnish a guide in regard to the determination of the question at issue. In

that Act are to be found three expressions, (1) persons '' interested in the land '' (2) persons ''entitled to act'' (3) persons ''competent to alienate the

land '' or ''having power to alienate the same.'' Section 3(g) mentions trustees among persons '' entitled to act.'' The clause runs thus: '' The

following persons shall be deemed persons entitled to act as and to the extent hereinafter provided, that is to say, trustees, for other persons

beneficially interested, shall be deemed the persons entitled to act with reference to any such case and that to the same extent as the persons

beneficially interested could have acted if free from liability.''

26. If there are no persons competent to alienate, the land the Act prescribes that the compensation shall be deposited in court and the court shall

order the money to be invested in the purchase of other lands. In Kamini Debi v. Pramatha Nath Mookerjee I.L.R.(1911) Cal 33 and Rama

Prasanna Nandi Chowdhuri v. Secretary of State for India, ILR (1913) Cal 895 it was held that a shebait is a person incompetent to alienate for

the purposes of Sections 31 and 32 of the Land Acquistion Act (Act I of 1894).

27. Section 10 contemplates the various interests possessed by co-proprietors, sub-proprietors, mortgagees and tenants.

28. Sections . 29 and 30 deal with the apportionment of the compensation.

29. In great detail provision is made in the Land Acquisition Act to safeguard the interests possessed by various persons in the land acquired. No

such provisions are to be found in the Act under consideration. Are we to assume that the legislature intended that the trustee should be compelled

to sell the land and that he should in lieu of it receive money which should be thenceforward at his absolute disposal? If the lands in possession of

trustees were intended to be included, certainly we should expect to find some provision in the Act dealing with the investment of the funds. To

adopt the construction suggested on behalf of the tenants would be in effect to held that the legislature intended the conversion of trust lands into

money without providing for the protection of the money so obtained.

30. We cannot assume that breaches of trust were intended to be facilitated by the Act.

31. These observations may apply to the cases of all limited owners, but we have nothing to do with the consequences that may follow from our

interpretation of the sections of the Act. If the legislature deems it necessary or desirable to extend further protection to tenants, the Act may be

amended but we have nothing to do with it.

32. It is said that this interpretation will cause hardship to the tenants. u/s 9 the tenant may apply for an order directing the landlord to sell the land.

There is nothing in the section to compel the tenant to do so. On his applying for a direction the court is required to pass an order directing the

conveyance of such interest as the landlord can pass. If the landlord cannot pass any interest the tenant cannot acquire it.

33. The contrast between Section 9 of the Act and Section 16 of the Land Acquisition Act is very marked. Under the latter, when the Collector

has made an award the land ''vests absolutely in the Government, free from all encumbrances.'' The absence of these words in Section 9 indicates conclusively that the sale to the tenant does not vest in him the land absolutely.

34. For these reasons I would answer the question referred to us in the-negative.

