

(1931) 12 MAD CK 0012

Madras High Court

Case No: None

Yeditha Bhupathi Raju
Garu

APPELLANT

Vs

Nyapati Subba Rao
Pantulu Garu

RESPONDENT

Date of Decision: Dec. 16, 1931

Acts Referred:

- Madras Estates Land Act, 1908 - Section 112
- Madras Local Boards Act, 1884 - Section 88

Citation: AIR 1932 Mad 410 : (1932) ILR (Mad) 646 : (1932) 35 LW 673 : (1932) 62 MLJ 472

Hon'ble Judges: Waller, J; Krishnan Pandalai, J

Bench: Full Bench

Judgement

Waller, J.

The respondent in this Second Appeal is a landholder within the meaning of the Estates Land Act. The appellant, who is a minor

inamdar holding under him, was found by a Bench of this Court in a litigation, to which he was not a party, to be one of his occupancy tenants. See

Yeditha Bhupatiraju and Another Vs. Bhavaraju Venkataratnam and Others, Up till that time the appellant had been treated as an intermediate

landholder and land cess had been calculated on the rental paid to him by his tenants. The Collector continued to calculate it on that basis and

collected it from the respondent. The appellant not having paid, the respondent proceeded against him u/s 112 of the Estates Land Act. The result

was a suit by the appellant contesting his right so to proceed. Put shortly, the suit is based on the plea that the cess should have been calculated on

the comparatively insignificant amount payable to the landholder by way of quit-rent. The Trial Court, finding that the appellant was a tenant and

not an intermediate landholder within the meaning of Section 88 of the Local Boards Act, decreed the suit. On appeal the District Judge dismissed

it on the ground that it should have been brought against the Secretary of State, a ground which has not been pressed before us in Second Appeal.

2. The short question for decision is whether the appellant is an intermediate landholder within the meaning of the Local Boards Act. To that

question there can, I think, be only one answer--that he is. The first proviso to the section refers to a person who ""holds lands with...a right of

occupancy as an intermediate landholder"" and that is precisely the position occupied by the appellant. The respondent is therefore entitled, under

the proviso, to collect from him the whole of the cess he has paid on his holding less one-half of the cess assessable on the quit-rent.

3. The appellant's next argument is that, if he is an intermediate landholder, he cannot be proceeded against, as if he were a tenant, under the

Estates Land Act. He relies on a decision of this Court *Lakshminarasimham Pantulu v. Sree Sree Ramachandra Mardaraja Deo* ILR (1913) 37

M. 319 : 24 M.L.J. 290. That decision was passed with reference to Sections 73 and 74 of the old Local Boards Act. The explanation recently

added to Section 89 of the present Act makes it clear that a landholder who proceeds against an intermediate landholder to recover land cess

under the first proviso to Section 88 can treat him as if he were a tenant within the meaning of the Estates Land Act. That probably was the

intention of the corresponding section of the former Act and it is possible to argue that the explanation has not altered the law, but explains what it

always was and was meant to be. Apart from that, it hardly lies in the mouth of the appellant, who bases his claim on the decision in *Yeditha*

Bhupatiraju and Another Vs. Bhavaraju Venkataratnam and Others, that he is an occupancy ryot, to turn round and plead that he is not. And, as I

have already pointed out, the Local Boards Act contemplates the possibility of an intermediate landholder being a person with an occupancy right

in his holding. The appeal is dismissed with costs.

Krishnan Pandalai, J.

4. The appellant-plaintiff who is a post-settlement minor inamdar brought this suit before the Sub-Collector u/s 112 of the Estates Land Act for a

declaration that the notice of sale of the holding issued at the instance of the respondent zamindar is invalid as the amount of land cess Rs. 33-11-4

for fasli 1333 for non-payment of which the notice was issued was not legally due from him. The Sub-Collector gave the appellant a decree. The

Zamindar appealed to the learned District Judge who reversed that decision and dismissed the plaintiff's suit.

5. The circumstances which led to the suit are as follows:--In an ejectment suit between the plaintiff and one of his tenants it was held by this Court

in April, 1921, that the plaintiff became by the grant of the darmilla inam owner of both warams and that therefore the plaintiff's tenants are not

entitled to occupancy rights under the Estates Land Act: Yeditha Bhupatiraju and Another Vs. Bhavaraju Venkataratnam and Others, The general

question as to the position of minor inamdars like the plaintiff was referred to a Full Bench and decided by a majority in the opposite sense in

March, 1922, in Brahmayya v. Achiraju ILR (1922) 45 M. 716 : 43 M.L.J. 229 But, of course, the rights of the parties to the litigation in Yeditha

Bhupatiraju and Another Vs. Bhavaraju Venkataratnam and Others, will be governed by the decision therein. The present defendant the Zamindar

not being a party thereto is not bound by that decision. So much for the plaintiff's position under the Estates Land Act.

6. The Collector acting under the Local Boards Act had been before 1921 assessing the land cess on the property on the rents paid by the

plaintiff's tenants. On reference by the Tahsildar he decided in view of the above conflicting decisions to continue that practice. The Zamindar who

is bound in the first instance to pay the cess took the matter to the Board of Revenue who confirmed the Collector's decision. u/s 86 of the Local

Boards Act the. decision of the Board of Revenue is final. The Zamindar having u/s 88 paid the local cess as assessed by the Collector for fasli

1333 demanded payment of the amount so paid (less one-half of the amount assessable on the jodi) under the first proviso to that section from the

plaintiff treating him as an intermediate landholder. The plaintiff refused to pay anything more than one-half of the amount assessable on the: "Jodi

on the ground that he is not an intermediate landholder but a tenant or ryot and the jodi paid by him is the rent on which the land cess should have

been assessed. The Zamindar issued a notice of sale of the inam. Plence the suit.

7. The question depends on whether the land cess on the property should have been assessed on the basis of the jodi of about Rs. 30 paid by the

plaintiff to the Zamindar as the plaintiff claims or on the basis of the rents received by plaintiff from his tenants as the Collector assessed it. This

depends on whether the plaintiff is an intermediate landholder within the meaning of the first proviso to Section 88 of the Local Boards Act liable to

pay the landholder the whole of the cess paid by him (less one-half of the cess assessable on the jodi) or a tenant within the meaning of the second

proviso to that section liable to pay only one-half of the cess.

8. The plaintiff-appellant's argument is that he having been found to be owner of both warams and a ryot under the Estates Land Act cannot be an

intermediate landholder within the meaning of the first proviso to Section 88 of the Local Boards Act. This contention ignores two points. Firstly, it

has not been found as between the present parties that the plaintiff is the owner of both warams. Secondly, and this is the more important point, the

question whether the plaintiff is an intermediate landholder for the purpose of the Local Boards Act depends on the definitions and scheme of that

Act and not on the definitions and scheme of the Estates Land Act. The definitions of the term "landholder" in the two Acts are entirely different. In

the Estates Land Act a landholder is a person owning an estate, the term "estate" being itself defined in the Act. In the Local Boards Act the term

"landholder" includes a very much larger class of persons including inter alia holders of land under ryotwari settlement. In the Estates Land Act the

term "ryot" means the holder of land in an estate for agriculture on payment of rent. This term is not used in the Local Boards Act. But the term

"tenant" is used and defined as including all persons who occupy land under a landholder or intermediate landholder whether or not they pay rent.

These differences are due to the two Acts not being in pari materia and therefore the application of ideas derived from one Act to questions arising

under the other are bound to be wholly misleading. The Estates Land Act is designed to regulate the rights of landholder and ryots in an estate as

defined by the Act. The taxation provisions of the Local Boards Act are designed to raise a fund for the purpose of Local Self-Government.

Therefore Section 78 of the Local Boards Act provides that land cess shall be levied on the annual rent value of all occupied lands on whatever

tenure held. Section 79 lays down how the annual rent value is to be computed for the various classes of lands mentioned in Clauses (1) to (3).

The present case falls under Clause (3) which deals with all lands not dealt with in Clauses (1) and (2) and says that the annual rent value is the

annual rent payable to the landholder or intermediate landholder holding under an under-tenure created, continued or recognised by a landholder

together with water-rate, if any, and in the case of lands in the occupation of the owner himself or of any one holding from him free or at a

favourable rate of rent, the annual rent value shall be taken to be the rent ordinarily payable for lands of similar quality in the neighbourhood,

together with the water rate, if any. Though the term "intermediate landholder" is not separately defined in the Act its meaning is clear from the

context in Sections 79 and 88. He is a person holding land on an under-tenure created, continued or recognised by a landholder and may hold with

or without right of occupancy. The test of being an intermediate landholder is not whether the person is the owner of only the melwaram but

whether he holds on an under-tenure created, continued or recognised by the landholder. If he satisfies the latter test he is an intermediate:

landholder though he may be entitled to one or both warams. In *Jagannaikulu v. Manager of Nandigam Estate* ILR (1914) 39 M. 269 : 28 M.L.J.

154 it was held that a mortgagee in possession of a Zamindar's rights is an intermediate landholder. Whether there is or is not an intermediate

landholder, the annual rent value is the rents payable by tenants, if any, together with what might have been received as rent for lands not let out if

they had been let out and also the full rent of land let out either rent-free or at a favourable rent. The object is clearly to subject to land cess the full

rent on the property which would have been payable by the occupants (tenants) to the landholder as if there had been no under-tenure and

irrespective of remissions or favourable rates of rent granted by the landholder or intermediate landholder.

9. The plaintiff is a minor darmilla inamdar. The terms of his grant are discussed in *Yeditha Bhupatiraju and Another Vs. Bhavaraju Venkataratnam*

and Others, Spencer, J., describes it as a simultaneous grant of the kudivaram and a part of the melwaram. The plaintiff being thus a grantee on

favourable terms of the melwaram, it is idle to contend that he is not holding on an under-tenure from the landholder for the purpose of the Local

Boards Act and it is for that purpose perfectly immaterial whether he is also entitled to the kudivaram. In both cases he is an intermediate

landholder under that Act and is subject to the duties and entitled to the rights conferred on them by the Act. His duty is to pay to the landholder

the land cess as assessed by the Collector or on appeal by the Revenue Board if the landholder has paid it and his right is if the land or any part of

it is in the occupation of tenants to recover one-half of the land cess attributable to their holding from them.

10. It follows that the plaintiff cannot at the same time be a tenant also in respect of the land of which he is an intermediate landholder. According

to the definition of tenant he must be a person who occupies land under a landholder or intermediate landholder. He must be a person different

from the person under whom he holds. It was objected that if the appellant is an intermediate landholder he cannot be proceeded against under the

Estates Land Act for his dues under the Local Boards Act and for this
Lakshminarasimham Pantulu v. Sree Sree Ramachandra Mardaraja Deo

ILR (1913) 37 M. 319 : 24 M.L.J. 290. is relied on. That was a decision under Sections 73 and 74 of the Local Boards Act of 1884. Section 74

of that Act corresponds to Section 89 of the Act of 1920. This case has to be decided on Section 89 as it stood before the amendment of 1930

which expressly subjects intermediate landholders to the procedure for realisation of rents from ryots under the Estates Land Act. In my opinion,

the sections even before the amendment was intended to have the same effect. The decision relied on put too narrow a construction on the words

when it held that the powers given by old Section 74 cannot be used except against ryots as denned in the Estates Land Act. The object and

intention of Section 74 of the Act of 1884 and of the corresponding Section 89 of the Act of 1920 is to make the procedure for realisation of rents

in force for the time being applicable to the realisation of amounts due respectively under both the provisos to Section 73 of the Act of 1884

corresponding to Section 88 of the Act of 1920.

11. It remains only to add that so far as concerns the determination of the annual rent value for the purpose of land cess, the decision of the Board

of Revenue on appeal, if any, by the landholder being final it is not open to the intermediate landholder or tenant, if any, to question that

determination when required by the landholder to pay what is due from them under the Act. The learned District Judge's grounds for dismissing the

suit were that the Collector assessed the lands wrongly at a larger figure than was due; that the defendant as the agent of the Government collected

more from the plaintiff than was really due; that the defendant cannot impeach the assessment under the law as he has done all that was open to

him under the Act; that the plaintiff cannot get back the sum from the defendant; that the plaintiff should and could sue the defendant's principal,

i.e., the Government to pay to him the excess collected from him. The learned Judge was in error in thinking that the plaintiff had paid the amount

demanded to the defendant.

12. From what I have said it follows that the above views are incorrect though the learned Judge's conclusion that the plaintiff's suit is

unsustainable is correct. I agree to the order proposed.