

## APPELLATE CIVIL.

*Before Mr. Justice Spencer and Mr. Justice  
Venkatasubba Rao.*

PARTHASARATHI AIYANGAR AND TWO OTHERS  
(PLAINTIFFS),

v.

1922,  
November,  
15.

DORAISAWMI NAICKER AND ANOTHER (DEFENDANTS).\*

*Madras City Tenants Protection Act (III of 1922), sec. 9—Tenant in possession of temple lands—No right under the Act to compel trustee to sell the land to him.*

A tenant in occupation of land belonging to a temple or mosque cannot enforce a compulsory sale of the land under section 9 of Madras City Tenants Protection Act and require the temple or mosque to deliver the land to him on a valuation to be made by the Court.

CASE stated under section 113 and Order XLVI, rule 1 of the Code of Civil Procedure, by C. V. VISWANATHA SASTRIYAR, City Civil Judge of Madras, in letter D. No. 405, dated the 20th March 1922, in Original Suits Nos. 75 and 76 of 1921, on his file for the opinion of the High Court.

This was a suit brought by the trustees of Parthasarathiswami temple at Triplicane in Madras to eject the defendants from certain temple lands which the defendants were occupying as tenants under the trustees. The defendants claimed *inter alia* under section 9 of Madras City Tenants Protection Act that the trustees should sell to them the lands in their occupation at a valuation to be fixed by the Court. Thereupon the Judge referred to the High Court the question whether the tenants had such right under the Act. The question referred is fully stated in the judgments of the High Court.

\* Referred Case No. 6 of 1922.

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*N. Srinivasa Achariyar* for plaintiffs.—Trust lands do not come under section 9 of the Act. Section 9 does not give the defendants the right claimed by them; for trustees of temple lands have not in law any “power” to sell temple lands. They are not owners and their only rights are to manage temple lands and to represent the temple in litigations respecting the same. See *Palaniappa Chetty v. Sreemath Devasikamony Pandara Samadhi*(1), *Jagadindra Nath Roy v. Hemanta Kumari Debi*(2) and *Bishen Chand Basawat v. Nadir Hossein*(3); compare section 60 of Civil Procedure Code. If the opposite contention were allowed all temple lands will be easily converted into money and there will be great risk to the temples. There is no provision in this Act corresponding to the one in Land Acquisition Act under which temple lands can be acquired. See *Shiva Rao v. Nagappa*(4), *Kamini Debi v. Pramatha Nath Mookerjee*(5). Proprietary rights not expressly taken away by a statute cannot by implication be presumed to have been taken away. See *Maxwell on Interpretation of Statutes*, pages 149 and 160.

*C. Ayyaswami Sastri* for defendants.—“Any power” in section 9 includes all conceivable power like that of trustees who can sell temple lands under certain circumstances. The Act has excepted by section 12 only some classes of lands and temple lands do not come under those classes. The inability to sell temple lands referred to in decisions quoted by the plaintiffs pertains only to voluntary alienations and it does not apply to cases where special Acts confer special rights in derogation of ordinary rights. The Act is not *ultra vires*, see section 80 (A) of the Government of India Act.

Plaintiffs' vakil was not called upon to reply.

(1) (1917) I.L.R., 40 Mad., 719 (P.C.) at 718.

(2) (1905) I.L.R., 32 Calc., 129 (P.C.) (3) (1888) I.L.R., 15 Calc., 329 (P.C.).

(4) (1906) I.L.R., 29 Mad., 117.

(5) (1912) I.L.R., 39 Calc., 33 at 37.

## JUDGMENT.

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 under section 9 of the Madras City Tenants Protection Act and require the temple or mosque to deliver the land to him on a valuation to be made by the Court.”

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 III 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 provides for the compulsory sale by a landlord of land in the possession of a tenant in the City of Madras from which the tenant is sought to be ejected in a suit instituted under the Presidency Small Cause Courts Act. The explanation to this section defines “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 signify 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. Sreemath Devasikamony Pandara Sannadhi* (1) the Judicial Committee quoting the words of Lord Justice KNIGHT BRUCE in *Hanoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree* (2) 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.”

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(1) (1917) I.L.R., 40 Mad., 709 (P.C.) at 715.

(2) (1856) 6 M.I.A., 393.

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And at page 716 quoting Sir MONTAGUE E. SMITH'S words [from *Prosunno Kumari Debya v. Golab Chand Baboo*(1)] they say :

“There is no doubt that, as a general rule of Hindu Law, property given for the maintenance of a religious worship and of charities connected with it, is inalienable.”

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 Sitaram v. Kasturbhai Manibhai*(2), 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.

*Kamini Debi v. Pramatha Nath Mookerjee*(3), MOOKERJEE

(1) (1875) 2 I.A., 145 at 150. (2) (1922) I.L.R., 46 Bom., 481 at 487 (P.C.).  
(3) (1912) I.L.R., 39 Calc., 33 at 38.

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 charitable purposes. In this Presidency also it is the practice to apply these sections whenever land belonging to temples and mosques is acquired for a public purpose. 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.

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VENKATASUBBA RAO, J.—I entirely agree. The question to be determined in this reference is whether a tenant can compel a trustee of a temple under section 9 of the Madras City Tenants Protection Act, Madras Act III 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.

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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 others' lands in

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

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

Section 4 enacts that, in a suit for ejection in which the landlord succeeds, the Court shall ascertain the amount of compensation payable under section 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.

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.

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 under section 3 and against whom a suit in ejection 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. Under section 9, therefore, the tenant, instead of parting with his building, becomes the owner of the land on which the building has been constructed.

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.

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 under section 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

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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.

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 Committee of the Privy Council and of various Courts in India. Confining my observations to the case of trustees, I may first refer to *Prosumno Kumari Debya v. Golab Chand Baboo*(1), where Sir MONTAGUE E. SMITH, in delivering the judgment of their Lordships, observes :

"But notwithstanding that property 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 litigious 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."

Regarding the power of the manager for an infant heir, the observations of Lord Justice KNIGHT BRUCE in *Hanoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree*(2), are quoted :

"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."

In *Palaniappa Chetty v. Sreemath Devasikamony Pandara Sannadhi*(3), the power of a trustee to grant a permanent lease of temple lands was considered. Their

(1) (1875) 2 I.A., 145 at 151.

(2) (1856) 6 M.I.A., 393.

(3) (1917) I.L.R., 40 Mad., 709 (P.C.).

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 debottar 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.

Referring to *Hanoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree*(1), their Lordships observe at page 716—

"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."

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

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.

An argument was advanced before the Judicial Committee that the charity will be benefited 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.

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These principles have not in the slightest degree been departed from in *Barva Magniram Sitaram v. Kastur-bhai Manibhai*(1), 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.

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.

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?

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.

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

(1) (1922) I.L.B., 46 Bom., 481 (P.C.).

necessity to justify an alienation. This argument begs the question because the point to be decided by us is "Does the Act impose such a statutory liability?"

The decisions bearing upon the interpretation of the word "power" used in various Acts such as the Civil Procedure Code and the Insolvency Act give us very little assistance in understanding the expression "under any power" in section 9. I may refer to *Fakirchand Motichand v. Motichand Hurruckchand*(1), 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 Chetti v. Thanikachalla Mudali*(2) and *Namma Setti v. Chidaraboyina*(3). I may also refer to *Jagabhai Lalubhai v. Bhukandas Jagjivandas*(4), which refers to the expression in section 266 of the Civil Procedure Code (Act XIV of 1882) "has a disposing power which he may exercise for his own benefit."

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

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(1) (1883) I.L.R., 7 Bom., 438 at 441.

(2) (1896) I.L.R., 19 Mad., 74.

(3) (1903) I.L.R., 26 Mad., 214.

(4) (1887) I.L.R., 11 Bom., 37.

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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 disability."

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*(1), and *Ramprussanna Nandi Chowdhuri v. Secretary of State for India*(2), it was held that a shebait is a person incompetent to alienate for the purposes of sections 31 and 32 of the Land Acquisition Act (I of 1894).

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

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

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 hold that the legislature intended the conversion of trust lands into money without providing for the protection of the money so obtained.

(1) (1912) I.L.R., 39 Calc., 33.

(2) (1913) I.L.R., 40 Calc., 895.

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

These observations may apply to the case 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.

It is said that this interpretation will cause hardship to the tenants. Under section 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.

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.

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

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