

Ramaswami Naicker, prosecution witness 7), is not mentioned in the charge.

Whether this omission, or the omission to charge accused 1 and 6 separately with the offence under section 326, if in the present case there was such an omission (which ODGERS, J., doubts), prejudiced those accused in their defence is a matter which the Bench which hears the appeal must deal with. It is not a part of the reference to the Full Bench. We answer the first part of second question in the negative and the second part in the affirmative.

KRISHNAN, J.—I agree.

RAMESAM, J.—I agree.

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APPELLATE CIVIL—FULL BENCH.

*Before Mr. Victor Murray Coutts Trotter, Chief Justice,
Mr. Justice Ramesam and Mr. Justice Wallace.*

DORAIVELU MUDALIAR (PLAINTIFF), APPELLANT,

1924,
April 7.

v.

NATESA GRAMANI AND THREE OTHERS (DEFENDANTS
1, 5, 6, AND 7), RESPONDENTS.*

*Madras Act III of 1922 (Madras City Tenants' Protection Act)
s. 9, applicability of, to trustees of religious institutions.*

Held, by the Full Bench that section 9 of the Madras Act III of 1922 (Madras City Tenants' Protection Act) applies to landlords who hold their lands as trustees of a religious or charitable institution. *Parthasarathi Aiyangar v. Doraisawmi Naicker* (1923) I.L.R., 46 Mad., 823, overruled.

APPEAL against the decree of PAUL APPASWAMI, City Civil Judge, Madras, in Original Suit No. 475 of 1921.

* City Civil Court Appeal No. 40 of 1922.

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The facts are given in the Order of Reference by PHILLIPS, J.

The plaintiff, the trustee, preferred this appeal.

This appeal coming on for hearing on Monday, the 18th day of February 1924, the Court made the following

ORDER OF REFERENCE TO A FULL BENCH :—

PHILLIPS, J.—This is an appeal against an order under section 9 of the Madras City Tenants' Protection Act, Act No. III of 1922, by which the tenant in this suit has been allowed to purchase the land on which he has built a superstructure at a price fixed by the Court.

There are a large number of connected suits and the question at issue is one that involves the rights of a large number of tenants in Madras City, i.e., whether Act III of 1922 applies to temple trustees who are landlords of land in the City of Madras. The appellant is the trustee of the Apparswami temple and in the appeal he has raised certain minor pleas which have no great force. In the first place, it is pleaded that the agreement to purchase the land at a price to be fixed by the Court was made before the Act had come into force and that the agreement was not an agreement to abide by the terms of the Act but was only an agreement to have a commissioner appointed for valuing the land. It is clear, however, that the agreement was really more than a mere agreement to have the land valued, for unless the landlord had agreed to accept the provisions of section 9 of the Act, no purpose could have been served by having the land valued. It is clear that he did consent to the particular procedure being adopted and he is now bound by that agreement unless it is void for other reasons. There is also no force in the contention that a written application should have been presented

under section 9. The Act does not specifically provide for a written application, nor have we any proof that no such written application was filed.

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The main point on which the appellant relies is the plea that the Act does not apply to trustees of temples and in this he is supported by the judgment in *Parthasarathi Aiyangar v. Doraisawmi Naicker*(1) which clearly is in his favour. I have had the advantage of reading my learned brother's judgment and with all respect I think with him that that decision is open to question. It is a matter of some importance, for this Act was passed

“for the protection of tenants in Madras who had constructed buildings on others' lauds in the hope that they would not be evicted so long as they paid a fair rent for the land,”

and we are given to understand that, if the ruling in *Parthasarathi Aiyangar v. Doraisawmi Naicker*(1) is correct, a very large number of tenants who hold under temple trustees will be deprived of the benefits of the Act; and unless it is necessary to hold that an Act which was expressly designed for their benefit has failed in securing its object, I would be inclined to hold otherwise, notwithstanding that an opinion has been expressed to the contrary. I, therefore, agree that the question ought to be referred for the decision of a Full Bench. The arguments of SPENCER and VENKATASUBBA RAO, JJ., proceed mainly on an interpretation of the explanation to section 9 which runs as follows:—

“‘Land’ means the interest of the landlord in the land and all other interests which he can convey under any power;”

and they have come to the conclusion that a trustee has no power to convey the land except for the benefit of the institution or for necessity. With all respect, it appears to me that this explanation cannot bear this interpretation. The explanation relates to the word

(1) (1923) I.L.R., 46 Mad., 823.

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“land” as used in section 9 alone, because in section 2 (2) there is another definition of “land.” In section 9 we find the following sentences containing the word “land”:—

“the landlord shall be directed to sell the land for a price to be fixed by the Court”

“the Court shall fix the price . . . of the land. . . . On payment of the price the Court shall pass a final order directing the conveyance of the land by the landlord.”

In all these instances, the word “land” is used with reference to what is to be sold to the tenant and conveyed by the landlord, and, in my opinion, the explanation is inserted to provide that the whole of the interest of the landlord shall be conveyed to the tenant, not merely his own interest but any other interest which he can convey under any power. For instance, the interest of the manager of an undivided Hindu family extends only to his own share in the property, but under the Hindu law he has the disposing power over the shares of the other members. Or, again, a landlord who had not an absolute estate might by means of a power of attorney or other deed so empowering him have the right to convey further interests in the land. If that is so, I think that it would be difficult to justify the arguments in the reported case. The power of a temple trustee to alienate temple property is undoubtedly limited, but it is well recognized that, under certain circumstances and for certain purposes, he can alienate the land, one of those purposes being necessity. When, therefore, the legislature has determined in the interests of the State that a landlord may be compelled to sell his land to a longstanding tenant in order to avoid gross injustice to that tenant, it is difficult to see how this direction does not impose a necessity on a trustee, who is also a landlord, to alienate the land. It can hardly

be said, nor do I think that it would be contended, that the Act is *ultra vires* of the legislature and, if it is not *ultra vires*, the legislature has imposed this necessity on temple trustees. It is not as if this was the only instance in which the legislature had compelled trustees to alienate trust property. Under the Land Acquisition Act, such land can be acquired by Government on payment of the proper compensation. There are clauses in that Act which to a certain extent safeguard the interests of the trust by providing that the compensation money shall be invested for the trust; but the mere fact that the present Act has failed to provide a similar procedure, viz., a procedure whereby the possibility of criminal misappropriation by the trustee will be lessened, cannot be taken as conclusively showing that the Act was not meant to apply to temple trustees. There is really no reason to presume that, when a temple trustee obtains possession of cash in lieu of land, he will at once proceed to misappropriate it; he can spend it on the purposes of the trust, or he can invest it so as to secure the income from the fund for the benefit of the trust, and I fail to see how any argument that this Act III of 1922 does not apply to temple trustees can be supported by the analogy of the Land Acquisition Act. The Judges of the former Bench were both agreed that temple trustees come within the definition of "landlord" in section 2 (3) of the Act and with that opinion I respectfully agree; but neither my learned brother nor I agree with the further conclusion that the Act is not applicable to temple trustees.

I think that it is necessary that the following question should be determined by a Full Bench; and in view of the fact that a number of cases are pending in which this question is at issue, I respectfully urge that the matter be considered at an early date. The

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question is, "Does the Madras Act III of 1922 apply to landlords who hold their land as trustees of a religious institution?"

ODGERS, J.—The suit from which this appeal arises was in ejectment by the trustee of the Apparswami temple, Mylapore, against a tenant who had erected a superstructure on the temple land. The suit was brought, we are informed, while the Bill which became the Madras City Tenants' Protection Act (Act III of 1922) was under discussion in the Legislative Council. The Bill was passed and while the Governor's assent to it was awaited, the City Civil Court Judge entertained an application by the tenants—(there were many suits of which this is one)—to proceed under the Act to enable the tenants to acquire their holdings from their landlord, the trustee of the temple. Commissioners were appointed by consent of all parties and on their report the City Civil Judge made his award, after the Bill had become law. The trustee had previously in C. S. No. 194 of 1921 been authorized by the Original Side of this Court to sell certain lands including those in question at certain prices. The prices awarded by the City Civil Judge are somewhat lower than those fixed by the Original Side. In appeal the point is taken that the Act does not apply to a trustee of a religious endowment at all. Reliance is placed on the decision of SPENCER and VENKATASUBBA RAO, JJ., in *Parthasarathi Aiyangar v. Doraiswami Naicker*(1). That was a reference by a different Judge of the City Civil Court to the High Court and the question referred was

"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."

(1) (1923) 1 L.R., 46 Mad., 823.

Both the learned Judges held that the trustees of religious endowments fell within the definition of landlord in section 2 (3) of the Act; but the difficulty they felt was in construing the explanation to section 9. It runs as follows:—

“ ‘Land’ means the interest of the landlord in the land and all other interests which he can convey under any power.”

They were of opinion that the words “under any power” must be applied to the limited power of a trustee of temple property to alienate, e.g., only for necessity or for the benefit of the institution. The learned Judges set out to enquire as to the interests which such a trustee can convey under any power, i.e., to examine the case law in support of their hypothesis that the power of alienation is limited. With great deference I think they were wrong.

The explanation is as to what is meant by the expression “land” in section 9 only. The word occurs in the first sub-section twice “the landlord shall be directed to sell the land” and “the Court shall fix the price according to the market value of the land.” In sub-section (3) it occurs once “the Court shall pass a final order directing the conveyance of the land.” The explanation then follows. As I read it, the meaning of the explanation is that the landlord thus conveys not only his own interests in the land but any other interests which he has power to convey. Power is used in its legal sense as in “power of attorney,” “power of sale,” “power of appointment.” The landlord in other words is to convey every kind of right or interest he has in the property whether in his own right or by rights conferred upon him. It therefore seems to me that a discussion as to the limited rights of alienation by trustees is wholly inapplicable to the wording of this explanation. Further

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in default of any express words or implication to the contrary in a settlement or trust deed, a trustee will take the whole legal estate and I have no doubt that in this case the legal estate is in the trustee of the temple. I have already said that it was held in *Parthasarathi Aiyangar v. Doraisawmi Naicker*(1) that a trustee falls within section 2 (3) and with that opinion I respectfully agree. It seems to me therefore with great respect that to hold that a tenant under a temple or other religious endowment cannot enforce a sale of land to him under section 9 of Act III of 1922 is wrong and I agree that in this difference of opinion the question should be referred to a Full Bench and I also agree as to the terms of the reference as set out by my learned brother.

ON THIS REFERENCE

V. Sivaprakasa Mudaliyar (with *O. V. Mahadeva Ayyar*) for appellant.—It is true that the word “landlord” in Madras Act III of 1922 will include ordinary trustees; but it cannot apply to a trustee of a religious or charitable institution; for he cannot sell such trust lands under the common law, except for necessity; section 9, explanation, applies to him; *Parthasarathi Aiyangar v. Doraisawmi Naicker*(1).

[C.J.—Section 3 shows the intention of the Act. But for the Act, the trustee need not pay any compensation to the tenant who wishes to quit.]

That is because a temple trustee can buy lands for the temple but cannot sell temple lands.

[COURT.—Except on “necessity” he cannot even purchase and the Act gives one instance of “necessity” to sell.]

“Necessity” must be considered with reference to the trust and not with reference to an Act. Temple

lands can be acquired by others only in certain methods, e.g., under the Land Acquisition Act and by proceedings under section 92, Civil Procedure Code. When the Act has not expressly said so, we cannot imply that proprietary rights of temples would be lost when the tenant wanted the land. For interpreting "land" we can look only to section 9.

N. Chandrasekhara Ayyar for *K. B. Ranganatha Ayyar* for respondent.—This is a remedial statute intended to benefit tenants of all kinds of lands. The definitions of "tenant" and "landlord" in the Act include tenants of temple lands and trustees of temple lands. A remedial statute should be given an extended and liberal meaning; see Maxwell on Statutes, 6th Edition, page 141. The preamble to the Act shows the intention to benefit such tenants. When the intention is clear we should not import other considerations, such as, whether ordinarily temple trustees cannot sell temple lands.

OPINION.

COURTS TROTTER, C.J.—This is a reference made by PHILLIPS, J., and ODGERS, J., obviously because they were not satisfied with the correctness of the decision of another Bench of this Court consisting of SPENCER and VENKATASUBBA RAO, JJ., in *Parthasarathi Aiyangar v. Doraisawmi Naicker*(1).

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The short point referred to us is, does the Madras Act III of 1922 apply to landlords who hold their land as trustees of a religious institution? The wording of the reference is not very definite, because it is conceded on all hands that the term "landlord" as defined in the Act must cover persons who are landlords by virtue of their capacity as trustees of trust lands with power to let them to tenants. The real point is as to whether the

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provisions of section 9 of the Madras Act III of 1922 apply to landlords who are trust landlords by virtue of being trustees of religious or charitable institutions.

The Act is a very unhappily drafted one and it is quite clear to us that any reasonable draftsman must have foreseen that a question such as the one we have now to determine was certain to arise and should have provided for it. However, he has not done so here in express terms and it remains to be seen whether, on the one hand, he has done so by necessary implication or on the other hand there are considerations outside the Act which compel us to say that it does not apply to landlords in the position of trustees.

The preamble to the Act is this :

“Whereas it is necessary to give protection to tenants who in many parts of the city of Madras have constructed buildings on others' lands in the hope that they would not be evicted so long as they pay a fair rent for the land . . . it is hereby enacted as follows.”

Then follows the body of the Act. In section 2, sub-section (3) occurs the following definition of “Landlord” :—

“Landlord” means any person owning any land and includes every person entitled to collect the rent of the whole or any portion of the land, whether on his own account or on behalf of or for the benefit of any other person.”

(I am only reading the material words.) Then by section 3, it is enacted that

“Every tenant shall on ejection be entitled to be paid as compensation the value of any building, which may have been erected by him, by any of his predecessors in interest or by any person not in occupation at the time of the ejection who derived title from either of them and for which compensation has not already been paid.”

and that

“A tenant who is entitled to compensation for the value of any building shall also be paid the value of trees which may have been planted by him on the land.”

To pause for a moment. It seems difficult to suppose that the Act could possibly have meant to exclude from the scope of this section a tenant who holds under a trustee or trustees of a trust or charitable endowment. The tenant has put up his building on somebody else's land and that somebody else on ejecting him is going to get the benefit of the tenant's work, and it is enacted in perfectly general language that in such cases the tenant shall have the benefit of his labour in the form of money compensation. It is said in this case that a landlord who is a trustee cannot deal with the trust lands unless it be for the benefit of the trust or for purposes necessary to the trust or endowment. Exactly the same line of reasoning would apply to the compensation provided for by section 3. It is of no benefit to the trust to pay out part of the trust funds whether income or capital, by way of compensation to eject a tenant, but it is a mere act of justice required to be done by the policy of the Act. Now I pass on to the section which is really material in this case, section 9. Sub-section (1) of that section begins thus :—

“ Any tenant who is entitled to compensation under section 3 and against whom a suit in ejectment has been instituted ”

And then provision is made in it that such a tenant shall have power to apply to the Court for an order for the sale of the land on conditions approved by the Court with the object of putting him in the position of a purchaser of his holding. The words are: “ Any tenant who is entitled to compensation under section 3.” *Prima facie* that would include all tenants who have put up buildings on their landlords' land whether those landlords are owners of the land or trustees of it. It is said that it is not so, because of the explanation appended to that section. I have always noticed in Indian statutes

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that, when any doubt is raised as to the construction of a section of an Act, it is usually raised by what is somewhat disappointingly called the explanation. So here, the explanation is

“Land’ means the interest of the landlord in the land and all other interests which he can convey under any power.”

It is said that this landlord, being a trustee for a charitable or religious endowment, has no interest of his own to convey and can only convey the trust property or the trust land under conditions defined by the Hindu law which I may summarize as being practically equivalent to a necessity arising out of the circumstances and the position of the trust at the moment; and it is on that ground that the decision in *Parthasarathi Aiyangar v. Doraisawmi Naicker*(1) proceeded. But it seems to me that it is wrong to seek to control a statute which is obviously intended to overrule the ordinary law, by general considerations imported from the Hindu law or what is called the common law of India. A trustee landlord can convey the interest of the trust in certain given circumstances. Two of those circumstances have been already referred to,—necessity and benefit for the trust,—and I think there is added a further one by this new Act III of 1922, namely, when a tenant has been in possession of the land and has put up a superstructure on the land and to eject whom would be in certain circumstances plainly inequitable without compensation, and in other circumstances, such as the one contemplated by the section would be inequitable without giving him an opportunity of acquiring the land for himself on payment. That consideration appears to dispose of this case.

We cannot accede to the contrary opinion of SPENCER and VENKATASUBBA, RAO, JJ., in *Parthasarathi Aiyangar*

(1) (1923) I.L.R., 46 Mad., 823.

v. *Doraisawmi Naicker*(1) and must answer the reference, not in the form of a direct answer to the question put but by saying that in our opinion section 9 of the Madras Act III of 1922 applies to landlords who hold their land as trustees of a religious institution.

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RAMESAM, J.--I agree.

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I think that the matter can also be put in a different way. Both in the case before us and in the case in *Parathasarathi Aiyangar v. Doraisawmi Naicker*(1), the plaintiffs were really the idols in the temple and their Lordships of the Judicial Committee remarked in *Vidya Varuthi v. Balusami Ayyar*(2), that, under the Hindu law, the image of a deity of the Hindu Pantheon is, as has been aptly called, "a juristic entity" vested with the capacity of receiving gifts and holding property. The landlord of the suit land is undoubtedly the idol of the temple within the definition of the term "landlord" in section 2, sub-section (3). That being so, there is no difficulty in applying the explanation to section 9 to the suit land. The explanation to section 9 consists of two parts. The first part refers to the interest of the landlord in the land, and the second to all other interests which he can convey under any power. The object of the second clause is to add to the first clause and not to cut it down. If any land falls under the explanation of the term as given in the first clause, one need not go to the second clause. In this case the suit land is the land belonging to the landlord, that is, the idol in the temple represented by the trustee.

I agree with the answer proposed by my Lord.

WALLACE, J.--I fully agree with all that has been said by the learned Chief Justice, and I should just like

WALLACE, J.

(1) (1923) I.L.R., 46 Mad., 823.

(2) (1921) I.L.R., 44 Mad., 881 (P.C.).

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to put my view in another form. If we take the procedure which is laid down in section 9, we find that any tenant, i.e., by definition "any tenant of land, liable to pay rent on it" not excluding a tenant of land owned by a trust, is entitled to move the Court for an order that his landlord shall be directed to sell the land. It is admitted that the trustee of trust lands comes within the definition of the term "landlord." When the Court has made that order and not earlier, as I conceive it, can a trustee landlord come in to object that such an order cannot be valid because he is not entitled in law to sell the land or to alienate it permanently except for necessity. To that the Court rejoins that the order itself has just provided the necessity required and it seems to me that on that the objection of the trustee landlord must vanish, as it cannot be argued that such an order of the Court directing him to sell the land is not a necessity justifying his conveyance of the land. In this view there seems to me nothing in the Act from which one may reasonably conclude that it was not intended to apply to a trustee landlord.

N.R.

APPELLATE CIVIL—FULL BENCH.

*Before Mr. Victor Murray Coutts Trotter, Chief Justice,
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MINOR SUYAMPRAKASAM ALIAS MINATCHISUNDARAM
BY NEXT FRIEND VALLI AMMAI ACHI (PLAINTIFF),
APPELLANT,

v.

MURUGESA PILLAI (DEFENDANT), RESPONDENT.*

Minor, suit by, against agent appointed by guardian—Maintainability of.

* Appeal No. 218 of 1921.