

## APPELLATE CIVIL.

*Before Mr. Justice Devadoss and Mr. Justice Waller.*

VALLURI NARASIMHA RAO, PROPRIETOR OF  
PEDDAMAMIDIPALLI (PETITIONER), PETITIONER,

1925,  
October 28.

v.

THE RYOTS OF PEDDAMAMIDIPALLI (RESPONDENTS),  
RESPONDENTS.\*

*Madras Estates Land Act (I of 1908), sec. 30, Chap. XI ss. 168, 171, 172, 192 and 215—Record of rights and settlement of rent—Fair and equitable rent, settlement of—Orders of Revenue Officer as to record of rights and settlement of rent—Appeal to Board of Revenue against order of Revenue Officer—Dismissal—Revision petition to High Court, whether competent—Revisional jurisdiction of High Court over orders of Board of Revenue and Revenue Officer, whether exists and when to be exercised—Suit—Settlement of fair and equitable rent under sec. 168 of the Act, whether controlled by limitations of sec. 30 relating to enhancement of rent—Failure to exercise jurisdiction.*

In proceedings under Chapter XI of the Madras Estates Land Act for making a survey, record of rights and settlement of rents, the High Court has revisional jurisdiction over the orders of the Board of Revenue passed on appeals under section 171 of the Act from the orders of the Revenue Officer in such proceedings.

*Ramaswami Goundan v. Kali Goundan*, (1919) I.L.R., 42 Mad., 310, followed.

In settling a fair and equitable rent under Chapter XI, section 168 of the Act, the Revenue Officer is not bound by the limitations of section 30 of the Act relating to enhancement of rent.

Consequently, where the Revenue Officer, in settling a fair and equitable rent under section 168, considered himself bound by the limitations under section 30 and the Board of Revenue on appeal confirmed the order, their orders should be set aside

\* Civil Revision Petition No. 262 of 1924.

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by the High Court on revision; and as section 173 of the Act, providing a remedy by suit in certain cases under Chapter XI, does not cover this case, the High Court would be justified in exercising its revisional jurisdiction.

CIVIL REVISION PETITIONS to the High Court under section 115, Civil Procedure Code, and section 107 of the Government of India Act, to revise the proceedings of the Board of Revenue, Land Revenue and Settlement, in Settlement of Rent Appeal 2 of 1923 preferred against the order of the Revenue Officer in Original Petition No. 1 of 1922 of Peddamamidipalli.

The material facts appear from the judgment.

*V. Ramadoss* for petitioner.

*A. Venkatarayalu Ayya* for respondent.

*Government Pleader (C. V. Anantakrishna Ayyar)* for the Board of Revenue.

#### JUDGMENT.

DEVADOSS, J.

DEVADOSS, J.—The Revenue Officer for the settlement of rents in the villages of Kalagampudi and Peddamamidipalli, Narasapur taluk, Kistna district, made a record of rights under Chapter XI of the Estates Land Act. The appeal of the proprietor of Peddamamidipalli to the Board of Revenue against the record of rights made by the Revenue Officer has been dismissed. He now moves the High Court to revise the order of the Board of Revenue.

Two points arise for decision in this case: (1) Has the High Court revisional jurisdiction over the orders of the Board of Revenue passed under sections 171 and 172 of the Estates Land Act? and (2) If the question of jurisdiction is answered in the affirmative, should the High Court exercise its revisional jurisdiction in this case?

The first point has been fully argued by Mr. Ramadoss for the petitioner and M. Venkatarayalu Ayya for the

respondents. We have also heard the Government Pleader to whom we gave notice to appear for the Board of Revenue as it was represented to us that a number of Civil Revision Petitions were pending in the High Court in which the question of jurisdiction was involved. After a careful consideration of the arguments in the case, I see no reason to change my view expressed in *Appanna v. Latchayya*(1). I do not wish to repeat here the reasons which I gave in that case but will deal briefly with the arguments of the learned Government Pleader.

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His contention is that the Board of Revenue is not a Civil Court and jurisdiction is given to it under the Estates Land Act to hear appeals from, and to revise, the orders of the Collector and the Settlement Officer and the High Court cannot revise the orders of the Board of Revenue either under section 115, Civil Procedure Code, or under section 107 of the Government of India Act of 1915. His argument is based upon the observations made by the learned Chief Justice in *Abdul Sattar Sahib v. Special Deputy Collector, Vizagapatam Harbour Acquisition*(2). In that case it was held that the High Court could not interfere in revision with the order of a land acquisition officer who refused to refer a case to the District Court under section 18 of the Land Acquisition Act. As the decision is that of a Full Bench I am bound by it, but I may be permitted to remark why could not the High Court interfere with the order of a land acquisition officer if he refuses to refer a case to the District Court when the High Court has jurisdiction to determine any question that may arise on a reference being made: In other words if the land acquisition officer makes a reference to the District

(1) (1924) I.L.R., 47 Mad., 250.

(2) (1924) I.L.R., 47 Mad., 357 (F.B.).

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Court, an appeal lies from the District Court to the High Court; but if he does not refer the case to the District Court the High Court is said to have no power to direct him to refer the case to the District Court. If a Collector refuses to refer a case to the Civil Court, he does something which he ought not to do, and the High Court which has the power to hear and determine matters on a reference being made to the District Court cannot be said to have no power to direct the Collector to do what he is bound to do. However, as that case has no application to the present, I refrain from making any further comment. The decision in *Parthasaradhi Nayudu v. Koteswara Rao*(1), has no application to the present case. According to that decision, where the legislature erects a tribunal for the purpose of determining any question which arises under a particular enactment, the High Court cannot interfere with the decision of that tribunal unless the High Court is empowered under the enactment which erects the tribunal to hear appeals from such tribunal or unless the enactment erecting the tribunal makes it a Civil Court within the meaning of clause 16 of the Letters Patent of the Madras High Court.

When a Settlement Officer makes a record of rights under Chapter XI of the Estates Land Act, he determines the rights and liabilities of both the landholder and the ryot. His proceedings are governed by the Civil Procedure Code. Vide section 192. Part B of the schedule of the Estates Land Act, No. 21, provides an appeal to the District Court against an order under section 137 for the repair of an irrigation work, and Nos. 22 and 23 provide for an appeal to the District Court in the case of applications by ryots to execute

(1) (1924) I.L.R., 47 Mad., 369 (F.B.).

works in default of the landholder and for the recovery of the costs of the repair of an irrigation work. From a perusal of Parts A and B of the schedule it is apparent that, wherever civil rights of the parties, i.e., landholder and ryot, are determined, an appeal is provided to the District Court. In the case of matters which are entirely within the cognizance of the Revenue Officer an appeal is provided to the Collector and against his decision a second appeal is provided under section 190 to the Board of Revenue. A record of rights is as important as, if not more important than, the terms of a patta, and section 173 gives liberty to a party to sue to set aside an order of the Settlement Officer in certain cases. Under section 172, the Board of Revenue may on application, or of its own motion, direct the revision of any record of rights or any portion thereof. The mere fact that an appeal lies to the Board of Revenue is no argument for saying that the High Court has no power under the Act to revise the orders of a Collector or Settlement Officer acting under Chapter XI. The Calcutta High Court has consistently held that, in the case of orders of Collectors or Revenue Officers determining the rights of the landlords and tenant, the High Court has power to interfere in revision with them. In *Kartik Ohendra Ojha v. Gora Chand Mahto*(1), it was held that

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“Proceedings on applications for enhancement of rent under section 27 of the Chota Nagpur Tenancy Act are judicial proceedings. The High Court has jurisdiction to interfere in cases where the Courts of Collectors have either exceeded the jurisdiction or failed or refused to exercise the jurisdiction vested in them by the Chota Nagpur Tenancy Act.”

The learned Judges observe at page 522 :—

“From the very nature of the proceedings themselves, and also from the provisions of the Act as contained, for

(1) (1913) I.L.R., 40 Cal., 518.

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instance, in Chapter XVI, it is clear that proceedings on application for enhancement of rent are judicial proceedings, and in view of the express provisions of section 224 (2) which allows in certain cases a second appeal to this Court, it cannot, in our opinion, be contended that Deputy Commissioners in the performance of their judicial duties under the Chota Nagpur Tenancy Act are not Courts subject to the appellate jurisdiction of this Court."

The learned Judges held that, notwithstanding that the Board of Revenue had revisional jurisdiction over the orders of Collectors, the High Court had revisional jurisdiction over such orders. In *Ram Dayal v. Ramadhin*(2), a bench of the Allahabad High Court held that the High Court had no power under section 622 to revise an order of a Collector under section 183 of the North-West Provinces Rent Act, Act XII of 1881, on appeal from an Assistant Collector of the second class. The arguments of STRAIGHT, J., who delivered the judgment of the Court, is that if it were held that the High Court had jurisdiction to revise such orders, it might create a dilemma inasmuch as the Board of Revenue also had revisional jurisdiction. The question is whether the High Court *could* and not whether it *should* interfere with an order of a Collector after the Board of Revenue has interfered with it. The question does not depend upon any dilemma arising in the exercise of revisional jurisdiction by the High Court as well as by the Board of Revenue. It would be a matter for consideration in each case whether the High Court should exercise its powers or not. If it considers that the case is not a proper case for the exercise of its revisional powers, it would refrain from doing so, but if it is, the High Court would interfere with such orders.

In one portion of the argument the learned Government Pleader almost suggested that if the Board of

Revenue declined to interfere with an order of a Collector, then the High Court might interfere, but if the Board of Revenue did interfere with such order, the High Court had no power to interfere. Such an argument, though not put forward in so many words by the Government Pleader, is on the face of it untenable. It is not seriously contended that *Ramaswami Goundan v. Kali Goundan*(1), was not correctly decided. The same learned Judges who decided *Ramaswami Goundan v. Kali Goundan*(1) decided *Paramaswamy Iyengar v. Alamebu Natchiar Ammal*(2).

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In considering this question, the aim and the scope of the Estates Land Act should be considered. Under the old Rent Recovery Act, Act VIII of 1865, the High Court had no revisional jurisdiction over orders of revenue courts. Under the Estates Land Act, Act I of 1908, appeals are provided to the District Court against the orders of revenue courts and the Civil Procedure Code is made expressly applicable to the proceedings of the revenue officers and revenue courts by section 192. Under section 202 the High Court is empowered to make rules consistent with the Estates Land Act declaring that any portions of the Code of Civil Procedure shall not apply to suits between landholder and ryot as such or to any specified classes of such suits or shall apply to them subject to modifications specified in the rules. These are innovations which are made in the present enactment and the object of the legislation was to determine the respective rights and liabilities both of the landholder and the ryot. In all cases where the rights of the landholder or the ryot are affected, an appeal is given to the District Court. It would be against the scope of the Act and the specific provisions

(1) (1919) I.L.R., 42 Mad., 310.

(2) (1919) I.L.R., 42 Mad., 76.

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of section 192 to hold that the High Court has no revisional jurisdiction over the orders of the Board of Revenue. It is unnecessary in this connexion to consider whether the Board of Revenue is a court subordinate to the High Court. All Courts which are governed by the Civil Procedure Code are Civil Courts and therefore the High Court as having the right of superintendence over all the Civil Courts in the Presidency has power over such Civil Courts as are erected by any enactment. The Board of Revenue is authorized under rule 21 framed by the Governor in Council under section 215 of the Estates Land Act to hear appeals from the decision of the Collector under Chapter XI. The mere fact that appeals lie to the Board of Revenue would not take away the power of the High Court to revise the orders of the Collector or of the Board of Revenue. It is nowhere said, and there is no provision in the Act or in the rules framed under the Act, that the orders of the Board of Revenue are final. The argument advanced in *Ram Dayal v. Ramadhin*(1), cannot apply to this case, for the Board of Revenue in this case is only an appellate authority and not a revisional authority. For the above reasons and for the reasons given by me in *Appanna v. Latchayya*(2), I answer the question in the affirmative.

*Second point.*—The Revenue Officer had to determine what was a fair and equitable rent. He thought he was bound by the provisions of section 30 of the Estates Land Act in determining under Chapter XI what was fair and equitable rent. The provisions of section 30 apply to enhancement of rent at the instance of the landholder. Under Chapter XI either the landholder or the ryot may apply to the Government for an order

(1) (1890) I.L.R., 12 All., 198.

(2) (1924) I.L.R., 47 Mad., 250.



directing that a survey be made and a record of rights be prepared by the Revenue Officer in respect of an estate or a portion of the estate. In making a record of rights the Revenue Officer has to be guided by considerations which are not necessarily the same as those arising under section 30. A Revenue Officer acting under Chapter XI should take into consideration the existing rate of rent, the rise in prices, the time when the rate was last settled and the present state of things as regards the facilities of irrigation and other circumstances which would enable him to settle what is a fair and equitable rent. Whatever may be the rate of rent, if he considers that it is not fair and equitable, he is entitled to alter it, and in doing so he is not bound by the rule in section 30 under which the increase cannot be more than As. 2 in the rupee. Under Chapter XI the Revenue Officer may reduce the rent and may settle different rates of rent for land of different value and different fertility. The Revenue Officer therefore has not exercised the jurisdiction which he had in determining what is fair and equitable in the circumstances of the case. The High Court does not interfere as a rule with the orders of Courts subordinate to it, or over which it has revisional jurisdiction in cases where there is another remedy open for the party than by revision. Section 173 provides for a suit by a party who feels aggrieved by the record of rights but none of the clauses (a) to (f) of sub-section 3 applies to the present case. The parties have no right of suit in this case and therefore this is a case in which the High Court would be justified in exercising revisional jurisdiction.

I therefore set aside the order of the Board of Revenue and the order of the Revenue Officer for the Settlement of Rents and direct him to make a proper

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record of the rent in the light of the remarks made above. Petitioner will have the costs of this application.

The costs of further proceedings will abide the result.

WALLER, J.

WALLER, J.—On the first point I think that the matter is concluded by *Ramaswami Goundan v. Kabi Goundan*(1), a decision from which I see no reason to dissent. On the second, I agree that the Revenue Officer in settling a fair and equitable rent is not bound by the provisions of section 30 of the Act. It is obvious that there is no right of suit in regard to the questions raised. If there were, we should not be justified in interfering in revision.

I concur in the order proposed.

K. B.

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## APPELLATE CIVIL.

*Before Mr. Justice Devadoss and Mr. Justice Waller.*

CHIDAMBARA THEVAR, SIXTH DEFENDANT,  
(RESPONDENT), APPELLANT,

1925,  
November 13.

v.

SUBBARAYAR (PETITIONER), RESPONDENT.\*

*Civil Procedure Code (Act V of 1908), O. XXI, r. 16, proviso 2—Mortgage-decree—Assignment—Application by assignee to execute decree—Assignee, alleged to be benamidar for a purchaser of hypotheca from some of the judgment-debtors—Assignee's right to execute the decree—Mortgage-decree, whether a decree for payment of money.*

A mortgage-decree is not a decree for the payment of money within the meaning of the second proviso to rule 16 of Order XXI, Civil Procedure Code.

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(1) (1919) I.L.R., 42 Mad., 310.

\* Civil Miscellaneous Second Appeal No. 91 of 1924.