

RANGA REDDI and that the main Act should be read as if the sub-  
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 MARAM REDDI. section had always been there. The answer is  
 LEACH C.J. that the preamble does not govern plain provi-  
 sions in the body of the Act, and where it is clear  
 that the amending act is more than declaratory it  
 cannot be given retrospective effect.

The appeal will be allowed and the suit dis-  
 missed with costs in this Court and in the Courts  
 below. These costs will be payable by the first  
 respondent.

G.R.

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## APPELLATE CIVIL.

*Before the Hon'ble Mr. A. H. L. Leach, Chief Justice,  
 and Mr. Justice Burn.*

1937,  
 November 5.

RYOTS OF GARABANDHA, SARIAPALLI AND RAMACHANDRA-  
 PURAM VILLAGES, GARABANDHA GROUP, PARLAKIMEDI ESTATE,  
 REPRESENTED BY PEDDINI RAMALINGAM SABHUDHI AND  
 FIVE OTHERS, PETITIONERS,

v.

ZAMINDAR OF PARLAKIMEDI, RESPONDENT.\*

*Madras Estates Land Act (I of 1908), sec. 168—Settlement  
 of fair and equitable rent under—Enhancement of rent—  
 Power of Board of Revenue as to—Limited to the twelve  
 and a half per cent provided by sec. 30 (i), proviso (b), if.*

In settling a fair and equitable rent under section 168 of  
 the Madras Estates Land Act, the power of the Board of  
 Revenue to enhance the rent is not limited to the twelve and  
 a half per cent provided by proviso (b) to section 30 (i) of that  
 Act.

Proviso (b) to section 30 (i) only applies to an enhancement  
 made in pursuance of an application under that clause, that is,

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\* Civil Miscellaneous Petition No. 1832 of 1937.

an application by the landholder seeking enhancement of rent on the ground that there has been a rise in the average local prices of staple food-crops. The words "and shall have regard to the provisions of this Act for determining the rates of rent payable by a ryot" in sub-section (2) of section 168 can only apply to the provisions of the Act which have general application.

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Decision in *Valluri Narasimha Rao v. The Ryots of Peddamamidipalli*(1) with regard to the scope of section 30 approved.

PETITION praying that in the circumstances stated therein and in the affidavit filed therewith, the High Court will be pleased to issue a writ of *certiorari* to the Board of Revenue, Madras, calling for records relating to Revision Petition No. 79 of 1936 on its file and to quash the proceedings of the Board in B.P. Mis. No. 3523, dated 9th October 1936, in Revision Petition No. 79 of 1936.

*B. Jagannadha Das* for petitioners.

*L. S. Veeraraghava Ayyar* for respondent.

*Government Pleader (K. S. Krishnaswami Ayyangar)* for the Board of Revenue.

*Cur. adv. vult.*

The ORDER of the Court was delivered by LEACH C.J.—In 1925 the Zamindar of Parlakimedi applied to Government under Chapter XI of the Madras Estates Land Act for a settlement of rents in respect of all the ryoti villages in his estate, and Government acceded to his request. A Special Revenue Officer was thereupon appointed to conduct the inquiry and after a lengthy investigation he announced his findings. The ryots contended that the rates fixed in the year 1868

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were permanent and were not liable to be altered. They further contended that in the event of this question being decided against them, section 30 of the Act limited any enhancement of rents to twelve and a half per cent. The Special Revenue Officer decided both these questions against the ryots and directed that the rents should be enhanced cent per cent. An appeal followed to a single Member of the Board of Revenue under section 171 of the Act. By an order dated 30th March 1936, the Member of the Board who heard the appeal upheld the contention of the ryots that the prevailing rates of money rent could not under the law be enhanced by over twelve and a half per cent in settlement proceedings. The zamindar then applied under section 172 to the Board for revision of this order. On 9th October 1936 the Board, by a majority, decided that the twelve and a half per cent limit was not applicable to proceedings under Chapter XI, but they disagreed with the Special Revenue Officer's finding that the rents should be enhanced cent per cent. They decided that the enhancement should not exceed thirty-seven and a half per cent. The ryots then applied to this Court for a writ of *certiorari* with a view to an order being passed quashing the Board's order of 9th October 1936. This application is now before us.

One of the grounds for asking for the issue of a writ of *certiorari* was that the Board of Revenue had no power to revise the order of the single member passed on 30th March 1936, but when it was pointed out that the ryots had appeared before the full Board and had submitted to its jurisdiction, this contention was dropped. The

learned Advocate for the ryots, however, contended that if the Board had no power to increase the rents beyond twelve and a half per cent, it acted illegally, and, therefore, had no jurisdiction to increase them by thirty-seven and a half per cent. The learned Government Pleader very properly conceded that if the Act did not allow an increase beyond twelve and a half per cent the ryots would be entitled to the issue of the writ. He, however, denied the contention that the Act did limit enhancement to twelve and a half per cent and this is the question which we are called upon to decide. In order to do so, it is necessary to examine certain of the provisions contained in Chapters III and XI of the Act.

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Chapter III, as amended by the Madras Act VIII of 1934, consists of sections 24 to 44 which are headed "General provisions relating to the rates of rent payable by ryots". The sections must speak for themselves without reference to the heading, but in passing it may be remarked that some of the sections obviously do not have general application and only apply in special cases. Section 24 states that the rent of a ryot shall not be enhanced except as provided by the Act. Section 27 provides that if a question arises as to the amount of rent payable by a ryot or the conditions under which he holds in any revenue year, he shall be presumed, until the contrary is shown, to hold at the same rate and under the same conditions as in the last preceding revenue year. Section 28 says that in all proceedings under the Act the rent or rate of rent for the time being lawfully payable by a ryot shall be presumed to be fair and equitable until the contrary is proved.

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Section 29 provides that the "waram" (that is the established rate of the village for dividing the crop between the landholder and the ryot) is not liable to enhancement. In view of the importance of section 30 so far as this case is concerned, it is advisable to set it out in full. It reads as follows:

"Where for any land in his holding, a ryot pays a money rent, the landholder may apply to the Collector to enhance the rent on one or more of the following grounds and no others—

(i) that during the currency of the existing rent there has been a rise in the average local prices of staple food-crops in the taluk or zamindari division;

(a) Provided that if the rent be permanently payable at a fixed rate or rates, it shall not be liable to be enhanced under this clause on the ground of a rise in prices;

(b) Provided also that no enhancement under this clause shall raise the rent by more than two annas in the rupee of the rent previously payable for the land;

(ii) that during the currency of the existing rent the productive powers of the land held by the ryot have been increased by an improvement effected by, or at the expense of, the landholder;

(iii) that a work of irrigation or other improvement has been executed at the expense of Government, and the landholder has been lawfully required to pay in respect of the holding an additional revenue or rate to Government in consequence thereof;

(iv) that the productive powers of the land held by the ryot have been increased by fluvial action.

*Explanation.*—'Fluvial action' includes a change in the course of a river rendering irrigation from the river practicable where it was not previously practicable."

It will be observed that proviso (b) of clause (i) limits any enhancement made in pursuance of an application *under this clause* to two annas in the rupee of the rent previously payable for the land, that is, twelve and a half per cent.

Section 31 contains rules with regard to the enhancement of rent on the ground of a rise in prices when the enhancement is claimed under section 30 (i). Section 32 states the rules to be observed when an enhancement is claimed under section 30 (ii). Sections 33 and 34 relate respectively to applications made under clauses (iii) and (iv) of section 30. Section 35 provides that notwithstanding anything contained in sections 31 to 34, the Collector shall not in any case order any enhancement which is under the circumstances of the case unfair or inequitable, or which would operate so as to raise the rent beyond the value of the established waram of the village in which the holding is situated, commuted in accordance with the provisions of section 40. Section 36 confers upon the Collector the power to order the enhancement to be gradual. It is not necessary to refer to the remaining sections in the chapter.

I will now turn to Chapter XI which is headed "Survey, Record of Rights, and Settlement of Rents". This chapter consists of sections 164 to 180. It will be sufficient for the purposes of this case if I refer to sections 164, 166 and 168. Section 164 gives power to the Local Government to make an order directing that a survey be made and a record-of-rights be prepared by the Collector in respect of an estate or portion of an estate. Section 166 (1) provides that when the Collector has, after making such inquiry as he sees fit, completed a preliminary record for the estate or part of the estate, he shall publish a draft thereof in the prescribed manner and for the prescribed period, and shall receive and consider any objection to any entry therein or to any omission

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therefrom, which may be made during the period of publication. When such objections have been considered and disposed of according to such rules as the Local Government shall prescribe, the Collector shall finally frame the record and shall cause it to be published locally in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under Chapter XI. Sub-section 2-A states that the Collector shall, along with the final record, cause to be published the name or official designation of the person to whom and the date on or before which the Local Government direct that applications for settlement of rent under sub-section 1 of section 168 should be made. The relevant parts of section 168 are sub-sections 1 and 2 which are in the following terms :

(1) " If on or before the date fixed under sub-section (2-A) of section 166 in respect of any village or any area for which a record-of-rights is published where such area is less than a village or within such further period, if any, as the Local Government may, in their discretion, from time to time, think fit to allow, either the landholder or the ryots apply for a settlement of the rent, provided that in the case of ryots the application is made by holders of not less than one-eighth of the total extent of the holdings in such village or area, the Collector shall, if the Local Government so direct, settle a fair and equitable rent in respect of the land situated in such village or area."

(2) " In settling rents under this section, the Collector shall presume, until the contrary is proved, that the existing rent or rate of rent is fair and equitable and shall have regard to the provisions of this Act for determining the rates of rent payable by a ryot."

It is on the strength of sub-section 2 that the petitioners contend that the powers of the Board of Revenue in enhancing rents is limited to twelve and a half per cent. It is said that

proviso (b) to section 30 (i) absolutely prohibits any further enhancement.

I consider this argument to be entirely fallacious. Proviso (b) to section 30 (i) only applies to an enhancement made in the case of an application under that clause and the application which led to enhancement of rents in this case was not under section 30 (i) but under section 168. Section 30 does not set out all the occasions on which it may be fair and equitable to revise rents. It deals with special circumstances, four in number, under which the landholder can apply for enhancement under that section. Chapter XI is designed to give authority to Government to step in at the instance either of the landholder or the ryots to settle what is a fair and equitable rent so far as the holding generally is concerned. The words "and shall have regard to the provisions of this Act for determining the rates of rent payable by a ryot" in sub-section 2 of section 168 can only apply to the provisions of the Act which have general application. Proviso (b) to section 30 (i) merely applies when the landholder seeks enhancement of rent on the ground that there has been a rise in the average local prices of staple food-crops.

This very question was raised in *Valluri Narasimha Rao v. The Ryots of Peddamamidipalli*(1) where DEVADOSS and WALLER JJ. held that in settling a fair and equitable rent under section 168 the Revenue Officer is not bound by the limitations of section 30. In that case, it was also held that in proceedings under Chapter XI the Court had revisional powers over the orders

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(1) (1925) I.L.R. 49 Mad. 499.



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of the Board of Revenue passed on appeals under section 171 of the Act from the orders of the Revenue Officer in such proceedings, but in *Rajah of Mandasa v. Jagannayakulu*(1) a Full Bench disagreed with this part of the judgment; though it did not question the validity or the correctness of the decision with regard to the scope of section 30. If section 30 has the effect which the learned Advocate for the petitioners says it has, it would mean that notwithstanding that rents are so unreasonably low that a rise of twelve and a half per cent would not do justice to the landholder there would be no remedy. This could never have been the intention of the Act, and, in my opinion, it is not possible without disregarding all canons of construction and the meaning of the words used to give to sub-section 2 of section 168 the interpretation suggested by the petitioners. It follows that in my opinion the Board of Revenue had full power to enhance the rents in this case by thirty-seven and a half per cent and this being so, the petitioners are not entitled to the issue of a writ of *certiorari*. Consequently the application will be dismissed with costs in favour of Government and those we fix at Rs. 250.

A.S.V.

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(1) (1931) 63 M.L.J. 450 (F.B.).

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