APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and
Mr. Justice Abdur Rahman.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL, REPRESENTED BY THE COLLECTOR OF NORTH ARCOT, (EIGHTH DEFENDANT), APPELLANT,

1939, January 6.

v.

M. A. C. ARUNACHALA MUDALIAR AND TWELVE OTHERS (PLAINTIFFS 1 AND 2 AND DEFENDANTS 1 TO 7 AND 9 TO 12), RESPONDENTS.*

Land Improvement Loans Act (XIX of 1883), sec. 4—"For the purpose of making any improvement" in—Meaning of—Improvements made before the granting of loan—Loan utilised for discharging debts previously contracted in connection with said improvements—Inapplicability of section 4 to said improvements.

The words "for the purpose of making any improvement" in section 4 of the Land Improvement Loans Act apply to improvements which had not been effected at the time when the loan was granted by Government and do not apply to improvements which had already been carried out at the time when the loan was granted though the loan was utilised for discharging the debts previously contracted in connection with the said improvements.

APPEALS against the decree of the Court of the Subordinate Judge of Vellore, dated 27th November 1933 and 16th August 1935, in Original Suit No. 69 of 1932.

Government Pleader (B. Sitarama Rao) for appellant.

K. Rajah Ayyar and *K. S. Rajagopalachari* for first and second respondents.

Ch. Raghava Rao for respondents 10 to 13.

Other respondents were not represented.

Cur. adv. vult.

*Appeals Nos. 77 of 1934 and 296 of 1935.

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THE JUDGMENT of the Court was delivered by ABDUR RAHMAN J.—This is an appeal by the Secretary of State for India and arises out of a suit filed by one Arunachala Mudaliar and his son on the basis of a mortgage deed (Exhibit A) executed in their favour by Narainaswami Naidu and his sons on 19th July 1925. Since priority was being claimed on behalf of the Secretary of State in respect of a sum of Rs. 5,000 advanced to Narainaswami Naidu on various dates between 28th September 1925 and 6th May 1926, he was also impleaded as a defendant in the suit. The trial Court decreed the plaintiffs' claim and overruled the plea of priority raised on behalf of the Secretary of State, and the only question which we have now been called upon to decide is if the decision of the trial Court is correct.

The facts which have given rise to this litigation are simple and may be set forth here. It appears that Narainaswami Naidu was desirous of installing a suction gas pumping plant on his land and intended to move the Government for an advance of Rs. 5,000, to effect this improvement. Before making a formal application, he seems to have approached the Assistant Industrial Engineer first and laid the proposed project before him for his consideration. The officer made two reports in this connection in April and May 1923 (Exhibit XII). In view of the uncertainty of the result of the application which he intended to make and at all events of the inordinate delay which an application of this nature would involve before it could be finally disposed of, he borrowed a sum of Rs. 2,000 on 26th May 1923 from the plaintiffs for purchasing an oil engine and executed a promissory note in their favour (Exhibit C). Narainaswami then presented an application to the Supervisor of Industries on

1st June 1923 (Exhibit II) in which he asked for "an agricultural loan of Rs. 5,000". During the investigation which proceeded on this application, he made two statements on 23rd July 1924 (Exhibit XVII) and on 9th September 1924 (Exhibit XVIII) to which we shall advert later. This application was rejected on 23rd October 1924, but Narainaswami made another attempt to secure the loan and addressed a letter to the Director of Industries on 26th February 1925 (Exhibit G) which was referred to the Collector. He was again examined by the Tahsildar on 10th April 1925 (Exhibit XIX) who recommended the loan to be advanced to him (Exhibit XXII) and this was finally sanctioned by the Director on 13th July 1925 and communicated to Narainaswami by means of a letter dated 16th July 1925 (Exhibit XXI). The plaintiffs at this stage appear to have been approached for another loan of Rs. 1,000 or so and they found an opportunity to have a deed of mortgage for Rs. 7,500 executed by Narainaswami and his sons in their favour (Exhibit A). This deed was executed on 19th July 1925 in consideration of the two prior promissory notes (Exhibits B and C) and of a sum of Rs. 1,007–11–0 which is stated to have been advanced at the time of the execution of the deed.

There is no doubt that the action of the plaintiffs in getting their simple money debt converted into a secured debt at this stage when the Director of Industries had sanctioned a loan for Rs. 5,000 six days earlier excites one's suspicion against the *bona fide* nature of this transaction but, in the absence of any other evidence, it is impossible to rest our decision on a surmise and a conjecture. They may have been duped by Narainaswami and his sons in the same manner as the Secretary of State and his officers

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have been. It is equally probable that the knowledge of Narainaswami having made or revived his application to the Government for a loan, or of the Director having sanctioned it, was deliberately kept back from the plaintiffs. It is easy to conceive that, if they had come to know of these facts, they would not have advanced a further sum of Rs. 1,000; but taking advantage of their position as creditors, they availed themselves of the opportunity afforded to them by agreeing to make a further advance only on the condition of their debt being secured. Whatever be the case, no question was put to Rungaswami Mudali (first witness for the plaintiffs) who was a clerk of the plaintiffs for twenty years and no evidence was produced on behalf of the appellant which would justify an inference of this nature.

To resume the narrative, Narainaswami executed a mortgage deed in favour of the Secretary of State on 5th August 1925 (Exhibit XXIV) under which some of the lands mortgaged to the plaintiffs were again mortgaged to him—but the mortgage deed recites that the debt was advanced under the provisions of the Land Improvement Loans Act (XIX of 1883) and those of the Agriculturists' Loans Act (XII of 1884). The learned Government Pleader contends that, in spite of the fact that the deed of mortgage in favour of the Secretary of State is subsequent to that of the plaintiffs, the former should have been held to have priority as the loan was advanced under the provisions of and for a purpose covered by the Land Improvement Loans Act and not under the Agriculturists' Loans Act. He urges that a reference to both the Acts in the forms, Exhibits III (*a*) and III (*c*), in Narainaswami's application, Exhibit XIII, and in the mortgage deed, Exhibit XXIV, was made under

a mistake as to the purposes for which the money could have been advanced, and that it fell under the provisions of the Land Improvement Loans Act alone and not under the provisions of the other Act. The learned Counsel on behalf of the respondents contends on the other hand that a reference to both the Acts was deliberate as the purposes for which the money was advanced fell partly under one Act and partly under the other. The determination of this question is important as a loan granted under the provisions of the Land Improvement Loans Act would have priority over the debts due to other mortgagees who have a charge or incumbrance on the land for the benefit of which it was granted by the Government.

This necessitates an examination of the various provisions of both the Acts referred to above. Section 4 of the Land Improvement Loans Act provides, as its name indicates, that loans may be granted under this Act for the purpose of making any improvement which adds to the letting value of the land. In the sub-clause of the same section "improvement" has been stated to include, besides other things, the construction of wells, tanks and other works for the storage, supply or distribution of water for the purpose of agriculture. The loans made under the Agriculturists' Loans Act can be made to owners or occupiers of arable land for the relief of distress, the purchase of seed and cattle or any other purpose not specified in the Land Improvement Loans Act, 1883, but connected with agricultural objects (section 4). A comparison of the two sections would thus show that if a loan could be granted under the Land Improvement Loans Act, it could not be granted under the Agriculturists' Loans Act.

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The relevant provision of section 7 of the Land Improvement Loans Act is to the effect that all loans granted under the Act along with interest and costs shall be recoverable out of the land for the benefit of which the loan has been granted as if they were arrears of land revenue due in respect of that land.

Section 8 of the Act provides that a written order under the hand of an officer empowered to make loans under the Act granting a loan for the purpose of carrying out a work described therein shall be conclusive evidence

(*a*) that the work described is an improvement within the meaning of the Act,

(*b*) that the person mentioned had at the date of the order a right to make such an improvement, and

(*c*) that the improvement is one benefiting the land specified.

After an examination of the various provisions of the Land Improvement Loans Act, there is little doubt that, if the loan was advanced for the purpose of installing a gas plant to facilitate the supply or distribution of water on Narainaswami's lands, it would fall within section 4 of the Act. The only question then is if it was advanced for that purpose. In this connection it will be interesting to note Narainaswami's statement recorded by the Revenue Inspector on 23rd July 1924 (Exhibit XVII) which reads as follows :

"The loan now applied for is not intended for sinking a well and purchasing an engine. I have applied for an agricultural loan of Rs. 5,000 for discharging the debt *previously contracted* in respect of this item. One year has elapsed since the date of purchase of the engine and lands are cultivated by this. The engine has been working. I have prepared and produced lists (Exhibit XVI) relating to

debts contracted in respect of engine and expenses. Amount spent till this date is Rs. 4,300. Cost of building to be constructed is Rs. 500 . . . ".

He made a similar statement to the Tahsildar on 9th September 1924 (Exhibit XVIII). To the same effect was the statement which he made on 10th April 1925 (Exhibit XIX) after his application was rejected and was being reconsidered at his request.

In view of these statements Mr. Sitarama Rao contended that it was wholly immaterial whether the improvements were already carried out on the date of the order granting the loan or not, as long as the purpose for which the loan was granted is covered by section 4 of the Act. In other words, he argued that the improvements for which the loan is advanced need not necessarily be such as have to be carried out in future. It was suggested by him that an application by an intending borrower for the purpose of making one of the improvements mentioned in the Act is conclusive of the matter, if it is accepted by the officer empowered to make loans under the Act. Reliance was placed by him on a case decided by a Division Bench of this Court, *Sankaran Nambudripad* v. *Ramaswami Ayyar*(1).

The facts of that case, however, are distinguishable from the facts of the present one. It was found as a fact in that case that the borrower had utilised the portion of the loan advanced under the Act for the improvement already effected, while it has not been established in this case that any portion of the money taken by Narainaswami from the Government went to liquidate the debts incurred by him for making the improvements. Mr. Sitarama Rao characterises this fact as a mere accident in that case and urged

(1) (1918) I.L.R. 41 Mad. 691.

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that this would not touch the principle on which the case was decided. We do not agree. There is no doubt that the learned Judges were greatly impressed by this fact, and the following remark made by SESHAGIRI AYYAR J., although liable to a different interpretation as well, must be understood to have been made in this sense. He observed :

"The test is not whether the improvement was subsequently made but whether the money was applied for the construction of agricultural improvements upon the property."

If the words "applied for" were used by the learned Judge in the sense of merely making an application to the Government, we would, with great deference, disagree. The whole case really turns on the interpretation of the words "for the purpose of making any improvement" used in section 4 of the Act. It is a well-known canon of construction, as observed by Lord WENSLEYDALE in *Grey and others* v. *Pearson*(1), that

"in construing wills and, indeed, statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no farther".

The business of an interpreter is not to improve upon the words of an enactment but to expound them. As observed by COCKBURN C.J. in *Palmer* v. *Thatcher*(2), the question for him is not what the Legislature meant, but what its language means, i.e., what the Act has said that it meant.

We have therefore to proceed on the principle enunciated by these eminent Judges and interpret the language of section 4 of the Land Improvement Loans

(1) (1857) 6 H.L.C.61. (2) (1878) 3 Q.B.D. 346, 353.

Act. To our minds, the words in the section are unambiguous and can be held to apply only to improvements which have not been effected at the time when the loan was granted and cannot be held to apply to improvements which had already been carried out at the time when the grant was made. A reference to section 8 of the same Act will not be out of place. The words used in that section are "for the purpose of carrying out a work" (thereby meaning improvement) and can be taken to mean only future improvements and not those which have already been made. We would have to face all kinds of difficulties and would not know where to draw a line, if we failed or refused to place a grammatical construction on these words. As an illustration we may take the case of a person who mortgaged his lands to *A* in 1910 and made certain improvements on those lands with the money received by him from *A*. Let us suppose that he mortgaged the same lands to *B* in 1922, discharged *A*'s debt, re-mortgaged the same lands to *C* in 1934, discharged *B*'s debt out of the money received from *C*, and then made an application in 1935 to the Government under section 4 of the Act. If the Government accepts his application and grants him a loan in 1936, would the claim of the Secretary of State be held to have priority over *C*'s claim as a mortgagee? If the construction suggested by Mr. Sitarama Rao is correct, he must, to be logical, say that it would be so. But when this case was put to him by one of us he was not prepared to go to that extent and said that this construction would be unreasonable, but he would confine the operation of the section to those cases only where improvements were effected by a person while he was either contemplating to make an application under the Act or had made one before

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the improvements were made. Where is the guarantee that the application made by a person would necessarily be accepted by the Government? Are the mortgagees, who have taken a mortgage without any knowledge of the borrower's intention to make an application or of the fact that an application has already been made by him, to remain in suspense for all this time? The position is to our minds impossible and cannot be accepted. After all it is for the Government to see, at the time when a loan is being granted, if any improvements have already been effected by the borrower and, if it finds that they have been, its officers should see that the persons who have advanced loans for this purpose are satisfied. In this case there is a volume of evidence on the record from which it has been established that Narainaswami never concealed the fact that improvements for which the money was being asked for, except to a small extent of Rs. 500 or so, were carried out long before the order granting the loan was passed. In fact he stated that his object in taking the money was not to make improvements but to pay off the creditors from whom he had raised loans to carry out these improvements. Is the payment of such debts one of the purposes mentioned in section 4? The answer can only be one and that in the negative There is no reason why we should read the words "for the purpose of making any improvement" as having the same meaning as the words "for the purpose of paying for an improvement" would have meant, if used in the section. There is nothing in the Act which would make the interpretation we are placing on these words repugnant to or inconsistent with the rest of the Act and surely there is no absurdity which this construction would entail. We

would therefore put a grammatical construction on these words and hold that they refer to future improvements only.

It cannot be denied, in our opinion, that the object of placing both these Acts on the statute book of India was to help the agriculturists and proprietors of agricultural lands and not to benefit the Government at least directly. If the assumption made by us be right, would it be correct to place the construction suggested by the learned Government Pleader on section 4 of the Land Improvement Loans Act ? Why should it be presumed that the Legislature was trying to take away from them by one hand an advantage which was conferred on them by the other ? It would be so, as in that case agriculturists would find it extremely difficult, if not impossible, to raise money on the security of their lands. Why should, one may well ask again, the mortgagees, who had already advanced moneys on the security of lands, be treated so unjustly ? Why should they be deprived of their securities or their claims be deferred to those of the Government by an action of their own mortgagors in making applications and getting advances under the Land Improvement Loans Act ? Why should the loans advanced by the Government under the two Acts be treated differently when the Agriculturists' Loans Act was passed only one year later ? The answer to all these questions is not far to seek. While the loans advanced under the Agriculturists' Loans Act are, as provided in the Act, with the object of relieving the distress of agriculturists and for supplying seed, etc., objects which would not improve the letting value of the land, the purpose of advancing loans under the Land Improvement Loans Act is specifically declared to be the improvement of the lands

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themselves. This would then mean that it was expected by the Legislature that the letting value of the lands would be improved, if the loans advanced by the Government were utilised for the purpose for which they were advanced, at least to the extent to which the money taken by the landlords under the Act was spent on them. In that case, the prior mortgagees could not be reasonably held to have suffered in regard to their security, as they had advanced money at the time when the improvements were not effected and the securities on which they had advanced their money would thus remain unaffected. It may be contended that the value of their securities enhanced by improvements effected with the funds advanced by the Government under the Act should not be permitted to be taken advantage of by prior mortgagees in the same way as they could have done if the mortgagors had effected improvements with their own funds. But this is a different matter. The Government could reasonably, and perhaps justly, insist that if any money was advanced by it under the Act, it would have priority to that extent in view of the fact that the lands have been improved with the funds provided on its behalf; and it would be unfair for the prior mortgagees to improve their position at the cost of the Government, which might not in that case agree to advance any money at all and the agriculturists would suffer in consequence. Looked at even from this point of view, the same result would follow and we must hold that the money advanced by the Government should have preceded and not followed the improvements effected on the land. The Government cannot therefore be allowed to have priority in respect of advances applied for and made after the

improvements were carried out with funds belonging to a private individual.

For the aforesaid reasons, we must hold that a sum of Rs. 4,150 out of Rs. 5,000 advanced by the Director of Industries does not fall within section 4 of the Land Improvement Loans Act and the appellant would not therefore have any priority to that extent over the plaintiffs.

As for the rest, the position is different. A sum of Rs. 675 was spent in constructing the engine shed after the grant was made and Rs. 175 were allowed by the Director to make further improvements to the installation. Mr. Raghava Rao's contention that Rs. 175 were also paid for a past improvement does not appear to be correct (*see* Exhibit XXXVI). This sum of Rs. 850 falls under section 4 and could be recovered by the appellant under section 7 of the Act with interest. The costs claimed by the Government against defendants 9 to 12 are not allowed and the appeal is in that respect rejected.

The result is that the appeal is allowed to this extent only and the decree of the lower Court would be modified accordingly.

As for costs, there is no reason why the respondents, who have succeeded to a large extent, should not be allowed to have them at least to the extent to which they have won. They would therefore have five-sixths of their costs in this Court and in the Court below.

Second Appeal No. 296 of 1935 is also dismissed.

G.R.