it has superintendence, but in settling such questions the Board acts in its administrative capacity.

EMBERUMANAR JEER SWAMIGAL v. H.R.E. BOARD, MADRAS.

LEACH C. J.

We are in entire agreement with the learned Judge when he says that it cannot be said that the Board's decision has declared any one's legal right or deprived any one of any legal right which he had and that the order of the Board complained of was merely an order dealing with the internal management of the temple. The issue of the writ of *certiorari* is a matter which lies within the discretion of the Court but in a case like the present one there is no question of discretion. It would obviously be improper to order the writ to issue.

The appeal will be dismissed with costs (one set).

A.S.V.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Krishnaswami Ayyangar.

PAMIDI VEDAVALLI THAYARAMMAL BY HER POWER OF ATTORNEY AGENT R. SINGANNA CHETTI (PLAINTIFF), APPELLANT,

v.

JUNUS CHETTIAR (DEFENDANT), RESPONDENT.*

1939, January 31.

Madras City Tenants' Protection Act (III of 1922), sec. 11—Superstructure not owned by tenant—Applicability of sec. 11 to case of—Ejection of tenant in such a case—Notice by landlord prior to—Period of, necessary—Transfer of Property Act (IV of 1882)—Notice specified by, in case of monthly tenancy—Sufficiency of.

Section 11 of the Madras City Tenants' Protection Act, 1921, is limited in its operation to the case where the tenant

* Letters Patent Appeal No. 78 of 1936.

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is the owner of the superstructure. Where he is not such an owner, the landlord is not bound, before seeking to eject him from the land and the superstructure, to give him the three months' notice required by that section. The provisions of the Transfer of Property Act which require only a notice of fifteen days on the footing of a monthly tenancy must be held to apply to such a case.

APPEAL under Clause 15 of the Letters Patent against the judgment and decree of PANDRANG ROW J., dated 23rd April 1936 and passed in City Civil Court Appeal No. 9 of 1935 preferred to the High Court against the decree of the Court of the City Civil Judge, Madras, in Original Suit No. 220 of 1933.

V. Ramaswami Ayyar for appellant.

K. Krishnaswami Ayyangar for *A. M. Krishnaswami Ayyangar* for respondent.

JUDGMENT.

KRISHNASWAMI AYYANGAR J.

KRISHNASWAMI AYYANGAR J.—The appellant in this appeal is the owner of a piece of land which was being let to tenants for running a firewood depot from about 1912. It is unnecessary to go into the earlier history of the tenancy. It will be enough to refer to Exhibit E, a registered rental agreement executed by two persons, V. Ratnavelu Mudaliar and T. Papiah Chetty, brother of the respondent, in favour of the appellant on 30th October 1922. By that agreement the tenants took over the land, which was described as vacant land of the extent of about two manais, on lease for a period of five years from 1st February 1923 for opening and running a firewood depot "after constructing a building on the said land" with the permission of the appellant. The agreement winds up by saying that the appellant should take steps for recovering the property in case of default in the regular payment of rent without reference to the period of the lease. This agreement,

as is clear, was one which was entered into between the parties after the Madras City Tenants' Protection Act, 1921, came into force which was on 21st February 1922. One of the questions argued on behalf of the appellant is that this tenancy agreement being in the nature of a contract entered into after the Act came into force, the provisions of the Act cannot apply to it. It is unnecessary to decide this point for there is another and a clearer ground on which we think that the appellant is entitled to succeed.

The learned Judge has found that the superstructure on the land does not belong to the respondent. He was inclined to think that that finding made no difference to his decision, though at the same time he expressed the opinion that, if it were necessary, he would have called for a finding on the question of the true ownership of the superstructure. We may at once say that we are unable to see any reason for taking this course, as both parties were content to have the dispute settled on the documentary evidence placed before the Court without caring to adduce any oral evidence. They had the opportunity, and if they did not avail themselves of it, it is their own fault. So we think that the case ought to be disposed of on the evidence on the record as it stands.

The finding being that the respondent is not the owner of the superstructure, the question is whether the appellant was bound, before seeking to eject him from the land and the superstructure, to give him the three months' notice required by section 11 of the Act. The learned Judge is of opinion that it is enough to attract the operation of this section that the respondent is a tenant, and that once it is found that he is a tenant, the three months' notice is obligatory irrespective of the question whether the

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KRISHNASWAMI AYYANGAR J.

tenant owns the superstructure or not. Section 11 is in these terms :

"No suits in ejectment or applications under section 41 of the Presidency Small Cause Courts Act, 1882, shall be instituted or presented against a tenant until the expiration of three months next after notice in writing has been given to him requiring him to surrender possession of the land and building, and offering to pay compensation for the building and trees, if any, and stating the amount thereof."

It is clear that the notice referred to in this section is one requiring the tenant to surrender possession of the land and building, and offering to pay compensation for the building and trees if any. There is nothing in the section or in the Act which enables the tenant to ask for compensation, when he does not own the building. In a case where the tenant is not the owner of the superstructure it is impossible to see how he can ask for compensation in respect of something which does not belong to him, or why the landlord should offer by his notice to pay compensation for a building which he himself owns. The entire scheme of the Act, as the preamble shows it, is to afford protection to a tenant who has constructed a building on another's land and not to throw obstacles in the way of a landlord enforcing his rights, even where there are no rights of a tenant to be protected. This is apparent from the language of the section itself, which seems to limit its operation to the case where the tenant is the owner of the superstructure. Where he is not such an owner, the provisions of the Transfer of Property Act which require only a notice of fifteen days on the footing of a monthly tenancy must be held to apply. We are unable to agree that this case is governed by section 11 of the Act.

In this view it is unnecessary to discuss any other question for the disposal of this appeal. Differing from our learned brother, we must hold that the notice to quit which had been given by the appellant before suit was sufficient. The appeal is allowed with costs here and in the Court below.

LEACH C.J.—I agree.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice King and Mr. Justice Abdur Rahman.

1939, January 18.

NATESA PADAYACHI (PETITIONER—TWENTY-EIGHTH DEFENDANT), PETITIONER,

v.

KRISHNA PADAYACHI AND THIRTY-SIX OTHERS (RESPONDENTS AND LEGAL REPRESENTATIVES OF DECEASED SECOND RESPONDENT), RESPONDENTS.*

Practice—Partition suit—Reversioner—Suit by, to recover his share of estate of last male owner improperly alienated by his widow—Reversioner with equal rights as plaintiff made a defendant in, supporting plaintiff and asking for a decree for his share—Court granting a decree to plaintiff for his share—Decree in favour of defendant-reversioner for his share—Duty to grant.

One of two reversioners sued for partition of the estate left by one K which had in the meanwhile been alienated by his widow. The other reversioner was made the twenty-eighth defendant in the suit and he filed a written statement supporting the plaintiff's case and asking that a decree might be given for his share of the property. The trial Court, though it gave a decree to the plaintiff for his share of the property, did not grant a decree in favour of the twenty-eighth defendant for his share and further dismissed an application made by him subsequently for a decree in his favour.

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* Civil Revision Petition No. 460 of 1931.