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that an injunction be awarded restraining the defendants from diverting into their Ura tank, the said stream and waters. To this must be added, having regard to the circumstances here, a mandatory injunction directing the defendants to fill up the newly excavated channel.

The appeal fails and is dismissed with costs. It is unnecessary, in view of the decree we have made, to make any special order upon the memorandum of objections. There will be no order as to costs in the memorandum of objections.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice Pandrang Row.

1938, March 22.

A. SUBRAMANIA IYER (SECOND DEFENDANT), APPELLANT,

v.

K. S. VENKATARAMA IYER AND SEVENTY-TWO OTHERS (PLAINTIFFS AND DEFENDANTS 1 AND 3 AND NIL), RESPONDENTS.*

Madras Estates Land Act (I of 1908), sec. 172—Republication of settlement record after confirmation by Collector—Exercise by Board of Revenue of its revisional powers under sec. 172 before—Jurisdiction—Proceedings under Ch. XI of Act—Money rent in respect of village where only rent in kind in vogue—Fixing of—Power of—Sec. 172—Paddy rent fixed by Board—Conversion of, into money rent at price fixed by Board itself—Order of Board under sec. 172 having effect of—Validity of.

(i) There is no warrant for the view that the Board of Revenue has no jurisdiction to exercise its revisional powers

* Appeal No. 289 of 1934.

under section 172 of the Madras Estates Land Act till after the settlement record has been republished after confirmation by the Collector.

All that section 172 does is to fix the outer limit of time within which the powers of revision may be exercised, namely, "at any time within two years from the date . . . of republication under sub-section (3) of section 170." This does not necessarily imply that the Board has no power of interference before the republication.

(ii) There is nothing in the scheme of Chapter XI of the Madras Estates Land Act to restrict the authorities settling the rent to the system of payment theretofore in vogue. In proceedings under that chapter the Board of Revenue has power in appropriate cases to fix a money rent in respect of a village where only rent in kind had theretofore been in vogue.

(iii) In the course of settlement proceedings under Chapter XI of the Madras Estates Land Act, the Board of Revenue purporting to act under section 172 of the Act passed an order fixing the landlord's share at eighty-seven kalams per veli instead of sixty-five kalams fixed by the Collector and directing the conversion of the paddy rent fixed by it into cash at a specified average price per kalam (as reported by the Collector) subject to a deduction of fifteen per cent for cartage, etc., charges. Even when the matter was before the Revenue Divisional Officer the landlord had opposed the proposal to fix the rent in cash; from that stage till the matter came up before the Board of Revenue no reference whatever was made to the question of cash rent and the whole procedure adopted by the Revenue Officer and by the confirming authority proceeded on the basis that the rent was to be fixed in kind; the data with reference to which settlement of rent in cash could be made were therefore never investigated and collected; and when the matter was before the Board and it gave an opportunity to the parties to show cause why cash rent should not be fixed the ryots objected to the fixing of cash rents.

Held that the Board of Revenue acted without jurisdiction in so far as it fixed money rents on the basis of a conversion rate.

If the Board had thought that it would be proper to fix rents on a cash basis, it must have sent the papers back to the Revenue Officer to make a re-settlement on that basis and not

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merely given him a direction to carry out a simple process of conversion of paddy rent into money rent at a price fixed by the Board itself.

A mere conversion of the paddy rate fixed by the Board into money on the basis of the average price of the last ten years is not what was contemplated by the Legislature as the settlement of rent in cash.

APPEAL against the decree of the Court of the Subordinate Judge of Kumbakonam in Original Suit No. 1 of 1933.

K. S. Krishnaswami Ayyangar and *S. Ramachandra Ayyar* for appellant.

T. R. Venkatarama Sastri for *M. S. Venkatarama Ayyar* for respondents.

VARADACHARIAR J.

The JUDGMENT of the Court was delivered by VARADACHARIAR J.—This appeal arises out of a suit instituted by the tenants of an inam village in the Tanjore District for a declaration that the entry in the record-of-rights, published in the village on 22nd June 1932, with reference to the rent payable by the ryots in respect of their holdings cannot be enforced. This publication was made in pursuance of a notice issued by the Sub-Collector of Kumbakonam on 10th June 1932 (Exhibit F) and that notice was given in pursuance of an order of the Board of Revenue (Exhibit D), dated 6th May 1932. It is this order of the Board of Revenue that is really challenged in the plaint. The order was passed by the Board in the course of proceedings taken under Chapter XI of the Madras Estates Land Act on an application made by the ryots for the preparation of a record-of-rights and for the settlement of rents in the village. The action is not one under section 173 of the Act and it is not based on any of the grounds specified in clause 3 of that section. As pointed out in *Zamindar of Khallikote* v.

Beero Pollai(1), the suit is one under the general law and is based on the ground that in passing the order, Exhibit D, the Revenue Board acted without jurisdiction and that in settling the rents and proclaiming the same in pursuance of that order, the Sub-Collector was not acting as the Revenue Officer exercising his powers under the Act, but merely as the mouthpiece of the Revenue Board [cf. *Sappani Asari* v. *The Collector of Coimbatore*(2) and *Mahabunnessa Bibi* v. *Secretary of State for India*(3)].

The learned Subordinate Judge made a declaration to the effect that the order of the Sub-Collector, dated 10th June 1932, directing the publication of the record-of-rights incorporating the settlement of rent made by the Board of Revenue in its order, dated 6th May 1932, is *ultra vires* and made without jurisdiction. It is against this decree that one of the landholders has preferred this appeal making the ryots and the other landholders respondents. Objection has been taken to the form of the decree as not corresponding to the prayer in the plaint; but it is much more satisfactory to deal with the real points in controversy between the parties and the objection to the form of the decree is not of much significance.

To bring out the grounds on which the validity of the Revenue Board's order has been attacked, it is necessary very briefly to narrate the history of the settlement proceedings. The Sub-Collector of Kumbakonam (who acted as the " Revenue Officer " in this case) passed an order on 28th June 1930 in the following terms:—

" Fifty kalams of paddy for one veli of wet land seem to be fair and equitable rent for the village. . . I therefore

(1) (1935) I.L.R. 59 Mad 825, 848 (F.B.): (2) (1903) I.L.R. 26 Mad. 742.
(3) (1925) I.L.R. 53 Cal. 561.

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declare that a rent of fifty kalams for one veli of wet land may be fixed."

According to the pre-existing rights of the parties, based on the pattas then in force, the landholders claimed that they were entitled to rent at a much higher rate. They accordingly preferred objections to this order of the Revenue Officer under section 169; and when dealing with the objections, the then Sub-Collector fixed sixty-five kalams per veli of wet land as a fair and equitable rent. This rent was fixed as payable not merely when a single crop was grown but also for both crops together when two crops were grown. The matter went up before the Collector of Tanjore as the "confirming authority." He agreed with the Revenue Officer so far as the fixing of sixty-five kalams per veli was concerned, but he added that the ryot will be liable to pay additional rent for *thaladi* or second crop cultivation. In paragraph 11 of his order, he directed the Sub-Collector to complete the rent roll and revise it in accordance with the Sub-Collector's conclusions and the observations contained in the order of the Collector and to submit it for final confirmation. This order of the Collector was passed on 17th August 1931.

It appears from the pleadings that some appeals had been preferred to the Board of Revenue against the Revenue Officer's order but in all probability the appeals were preferred too late. However, there were also three revision petitions to the Board, two by the landholders in October 1931 and one by some of the ryots in November 1931. When these revision petitions came on before the Board on 19th February 1932, a suggestion was thrown out that the rents might be settled in cash and both parties were asked to show cause at the adjourned hearing why cash rents should

not be fixed. The petitions came on finally before Mr. (now Sir CHARLES) SOUTER on 6th May 1932. By the order then passed, the Board fixed the landlord's share at eighty-seven kalams per veli instead of sixty-five kalams fixed by the Collector, the main reason being that the proportion of sixty and forty in which according to the custom of the village the crop was divisible between the landholder and the ryot should be worked with reference to the gross yield and not after allowing a deduction for expenses of cultivation. The order next proceeded to deal with the question whether the rent should not be fixed in cash; and, holding that that was the proper thing to do, it directed conversion into cash at the average price of Rs. 2–15–0 per kalam (as reported by the Collector) subject to a deduction of fifteen per cent on account of the distance of the village from the nearest town market. The Sub-Collector was asked to work out money rents on the above basis.

The validity of this order has been challenged in the plaint on several grounds. Three grounds in particular have been pressed before us: (i) that the order is not one passed under section 172 of the Estates Land Act and that if it was intended to be one under section 172 the Board had no power to interfere in revision at that stage; (ii) that in proceedings under Chapter XI the Board had no power to fix a money rent in respect of a village where only rent in kind had hitherto been in vogue; and (iii) that the Board of Revenue could even under section 172 only *direct* a revision and not itself fix the rent. It is unnecessary to refer in detail to the judgment of the lower Court and the views expressed in that judgment on the above points. There has undoubtedly been some uncertainty and conflict of judicial opinion on the interpretation of some of the

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relevant sections of the Act and the learned Subordinate Judge when he pronounced judgment had not before him the later decision of this Court in *Zamindar of Khallikote* v. *Beero Pollai*(1).

Out of the three objections above referred to, we may state that we do not see much force in the first or in the second. It is true that at the time the order of the Board was passed, the Revenue Officer had not completed the settlement in accordance with the directions of the confirming authority nor had the republication under clause 3 of section 170 been made. But we are not prepared to interpret section 172 of the Act as giving powers of revision to the Board only after the republication under section 170, clause 3, had been made. All that section 172 does is to fix the outer limit of time within which the powers of revision may be exercised, namely,

> "at any time within two years from the date . . . of republication under sub-section (3) of section 170."

This does not necessarily imply that the Board has no power of interference before the republication. Its powers as an appellate authority under section 171 can certainly be invoked and exercised independently of the question of confirmation by the Collector or republication under section 170, clause 3; under the provisions of section 174 the orders passed under section 171 are directed to be incorporated in the settlement record already published under section 170 (3). Section 172 gives the Board powers of revision both *suo motu* and on the application of parties. We see nothing either in the language of the section or in the reason of the thing to justify the view that even where the Board is satisfied that the proceedings before the Revenue

(1) (1935) I.L.R. 59 Mad. 825 (F.B.)

Officer require to be set right, it must wait till after the procedure under section 170 has been gone through and cannot interfere at an earlier stage and give necessary directions. It may often be convenient and help to save time to give the directions at the proper stage instead of waiting for the formal completion of the settlement records. Whether, in any particular case, the Board will find it more convenient to adopt the one course or the other is a different matter; but it seems to us that there is no warrant for saying that the Board has no jurisdiction to exercise its revisional powers till *after* the settlement record has been republished after confirmation by the Collector.

Similarly, it seems to us that there is nothing in the scheme of Chapter XI to restrict the authorities settling the rent to the system of payment theretofore in vogue. Circumstances are conceivable in which the settlement of a fair and equitable rent can be better accomplished by fixing a rent in money. The provision in section 178 against the commencement or continuation of proceedings under sections 30, 38 and 40 of the Act during the pendency of settlement proceedings clearly implies the possibility that what could be done under these three sections might be done as part of the settlement proceedings. Here again it is one thing to say that the settlement officer is not bound to carry out the duties imposed upon the Collector under sections 30, 38 and 40 in independent proceedings, but a different thing to say that the settlement officer has no power to do such things even when he thinks it necessary to adopt that course in order to effect a satisfactory settlement of rent. The decision in *Ryots of Garabandha, etc., villages* v. *Zamindar of Parlakimedi*(1) and rule 22 of the rules framed by the Local Government under

(1) I.L.R. [1938] Mad. 858.

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the Act clearly assume that in the course of the settlement proceedings steps like those contemplated by sections 30, 38 and 40 of the Act might be taken.

It remains to deal with the third ground of objection, namely, that section 172 only contemplates the Board *directing* a revision by the subordinate authority and not the fixing of rent by the Revenue Board itself. That this is the appropriate construction of section 172 was laid down in *Zamindar of Khallikote* v. *Beero Pollai*(1) following *Zamindarini of Mandasa* v. *Ryots of Mandasa Zamindari*(2); but it was also laid down in those cases that in certain circumstances a procedure which goes further than merely direct a revision by a subordinate authority might not amount to anything more than an "irregularity." Whether what has happened in any particular case must be regarded as only an irregularity or as something done without jurisdiction or in excess of jurisdiction will depend upon the circumstances of each case. If, on the facts of any particular case, what the Board did in addition to what is contemplated by section 172 amounted to little more than a mere arithmetical calculation or something of that kind, it might well be held that though it was unnecessary there was nothing in the nature of excess of jurisdiction in the exercise of such powers. Where, on the other hand, the Board has proceeded to do something which is really more than a ministerial or arithmetical step and which if it had been directed to be done by the Revenue Officer would have involved a consideration of a number of matters which were not and could not have been before the Board at the time that it passed such order, it will only be reasonable to hold that so much of the Board's order as goes beyond what is contemplated by section 172 is done without jurisdiction. Dealing with the

(1) (1935) I.L.R. 59 Mad. 825 (F.B.). (2) (1932) I.L.R. 56 Mad. 579.

order of the Board in the present case in the light of this test, we are of opinion that the Board acted without jurisdiction in so far as it fixed money rents on the basis of a conversion rate of Rs. 2–15–0 per kalam subject to a deduction of fifteen per cent for cartage, etc., charges.

It is a matter of some significance in this case that at an early stage in the proceedings when the matter was before the Revenue Divisional Officer, the landlord *opposed* the proposal to fix the rent in cash. [See Exhibit G, paragraph 2 (*b*).] From that stage till the matter came up before the Board of Revenue, no reference whatever was made to this question of cash rent and the whole procedure adopted by the Revenue Officer and by the confirming authority proceeded on the basis that the rent was to be fixed in kind. The data with reference to which settlement of rent in cash could be made were therefore never investigated and collected. It is true that when the matter was before the Board the parties were given an opportunity to show cause why cash rents should not be fixed; we are informed that at that stage the ryots objected to the fixing of cash rents. The matter seems to have been argued only as a point of law and the Board of Revenue, so far as one can judge from the terms of Exhibit D, seems to have been of the opinion that a settlement of rent under Chapter XI can be *only* on a cash basis. We are not sure that Chapter XI can be so restricted; but we should not have thought fit to interfere with the Board's order merely on the ground of this error if, after deciding that the settlement should be on a cash basis, the Board had sent the case back to the Revenue Officer to settle rents on a cash basis after making the necessary investigation. As we have already observed, this is the procedure contemplated by section 172. The Board seems to have

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assumed that a mere conversion of the paddy rate fixed by it into money on the basis of the average price of the last ten years would amount to a settlement of rent on a cash basis. With all respect, we do not think that that is what was contemplated by the Legislature as the settlement of rent in cash. If it had at all been present to the mind of the Revenue Officer that the rent payable by the ryots should be fixed in cash, he would have investigated a number of matters relevant to that question. Even in proceedings under section 40, the average of the last ten years excluding famine years is only *one* of the factors to be taken into account; and in proceedings for settlement of rent it must *a fortiori* be true that the average price of the preceding ten years is not the only factor to be considered. In these circumstances, we are unable to hold that what the Board did in the present case in the matter of fixing cash rent is within the powers conferred upon it by section 172. If it had thought that it would be proper to fix rents on a cash basis, it must have sent the papers back to the Revenue Officer to make a resettlement on that basis and not merely given him a direction to carry out a simple process of conversion of paddy rent into money rent at a price fixed by the Board itself. We however see no objection to the rest of the Board's order on any ground of jurisdiction.

The result is that this appeal must be allowed in part. In modification of the lower Court's decree the order of the Board and the consequent settlement of rent by the Sub-Collector will be declared *ultra vires* only in so far as they related to the conversion of the paddy rent fixed by the Board into money rent. In the circumstances, we direct the parties to bear their respective costs in the appeal.

A.S.V.