ANDHRA PRADESH HIGH COURT

Dontireddy Venkata Reddy

Vs

Bhimavarapu Bhushireddy

(S Ahmed, C.J. Venkatesam and Vaidya, JJ.)

06.03.1970

JUDGMENT

Vaidya, J.

1. The case has been referred to us by a Bench of this Court as in its opinion the question raised in Writ Appeal No. 98 of 1967 and L. P. A. No. 116 of 1967 involve intricate questions relating to the s open of jurisdiction of Tahsildar under Section 13 of the Andhra Pradesh Tenancy Act. It was also pointed that there are certain observations in the judgment in Gorla Buchaiah v. Mukala Swami Naidu, (1962), 1 Andh WR 10 which require close scrutiny in the light of the Supreme Court's decision placed before them.

2. The facts relating to Writ Appeal No. 98 of 1967 and Letters Patent Appeal No. 116 of 1967 may briefly be stated. One Dontireddy Venkata Reddy filed an application A. T. P. 38 of 1968 before the Deputy Tahsildar, Vijayawada u/s. 13 (a) and (c) of the Andhra Tenancy At XVIII of 1966 (hereinafter called the Act) for termination of tenancy against his cultivating tenant Bushireddy and others. The allegation was that the petitioner's family owned about 30 acres of lonka land described in detail in the schedule in the village Chagantipadu which is situated about two miles from the schedule lands. In June 1957 Bushireddy, the 1st respondent, in the petition took the land on lease for 1957 on a rent of Rs. 50/- per acre and took a written lease from the petitioner. It was also agreed that the 1st respondent should not sub-let the land to anybody and pay half the amount in the month of August 1957. The 1st respondent undertook to vacate the land without any notice by 1-7-1958. the 1st respondent has not paid the balance of rent of Rs. 900/- and has not vacated the land as stipulated. When the petitioner got a registered notice issued to him the 1st respondent got a reply notice issued with false and untenable allegations. The 1st respondent had sub-let the land to respondents 2 to 6 and thus contravened the terms of the lease. It was, therefore, prayed that the Court may be pleased to pass a order evicting all the respondents from the schedule land and awarding costs of the petition to the petitioner.

3. That 1st respondent denied taking 30 acres of land on lease and in Para 3 of the counter-affidavit filed by him he stated that the petitioner did not own 30 acres of lonka land in Chagantipadu, but on the other hand the petitioner owned only 20 acres of land in two plots of 10 acres each at two different places. The petitioner had leaned out only one plot of 10 acres of land and the rent therefore has been duly paid. The 1st respondent was not inducted into possession as sublessees. Respondents 2 to 6 also took the same stand that only 10 acres of land was leased out to respondent No. 1 and they were in possession of 20 acres of land from a long time. The land of the respondents was to the north of the petitioner's 10 acres plot. They had no connection whatsoever either with the petitioner or the 1st respondent and therefore could not be deprived of their possession.

4. On these averments, the Deputy Tahsildar, proceeded to hold an enquiry and on examining six witness for the petitioner and seven witnesses for the respondents besides marking documents on either side held that the petitioner had proved his case and ordered eviction of the respondents 1 to 6 from the schedule lands. The order was made on 18-12-1962. The matter was carried in appeal to the Revenue Divisional Officer at Vijayawada in A. T. No. 2 of 1963 by the 1st respondent and in A. ,T. 1 of 1963 by 1st respondent and in A. T. 1 of 1963 by the other respondents, who by his order dated 7-2-1963 rejected both the appeals and confirmed the order of the Deputy Tahsildar. Aggrieved by the decision the main lessee 1st respondent filed Writ Petition No. 239 of 1963 seeking to quash that order by issue f a writ of certiorari, while the alleged sublessees respondents 2 to 6 filed Civil Revision Petition No. 2140 of 1963 under Article 227 of the Constitution alleging that the Tenancy Tribunals had no jurisdiction to decide the question as they did not come within the definition of cultivating tenants. Dontireddy Venkata Reddy had also filed a suit O. S. No. 190 of 1961 in they Court of the District Munsif, Vijayawada against the lessee (respondent No. 1) for the recovery of rent for 30 acres of land at the rate of Rs. 50/- per acre, Bushireddy the tenant contested the claim of the plaintiff more or less on the same grounds as have been raised before the Deputy Tahsildar. The contention in main was that the petitioner had leased out only 10 acres of land and he had not committed any default in payment of rent. The other respondents are not parties to the suit. The learned District Munsif, Vijayawada after enquiry dismissed the suit of the plaintiff on the ground that only 10 acres of land was leased out to the defendant in the case and the defendant was not a defaulter in that respect. The decree was upheld on appeal by the Subordinate Judge, Vijayawada in A. S. No. 102 of 1963. A second appeal No. 570 of 1965 was filed challenging the decision of the Subordinate Judge made in A. S. 102 of 1963.

All these three proceedings viz., Writ Petn. No. 239 of 1963, Civil Revn. Petn. No. 2140 of 1963 and the Second Appeal No. 570 of 1965 came before our learned brother Kumarayya, J., (as he then was) and were disposed of by him by a common order dated 28-4-1967 whereby the Civil

Petn. No. 239 of 1963 and the Civil Revn. Petn. No. 2140 of 1963 were allowed and the Second Appeal No. 570 of 1965 was dismissed. While allowing the Civil Revn. Petn. it was held that (a) a sub-lessee is not within the definition f a cultivating tenant; (b) the general principle that an order obtained against a lessee ensures against the sub-lessees has no application to a case where a tribunal has been created with a limited jurisdictional (c) the Revenue Authorities under the Act had no jurisdiction lord and sub-lessee; and (d) no order of eviction can be passed against a sub-lessee. In the writ petition, Kumarayya, J., (as he then was) held that (a) whether 1st respondent is a tenant of 20 acres also is a jurisdictional fact and decision by revenue authorities on that question is not final and conclusive and a Civil Court had jurisdiction to decide that question; (b) the Civil Court in the instant case has decided that 1st respondent was a tenant of only ten acres and there was no default in payment of rent on his part and that finding of fact cannot be disturbed in a second appeal and it has become final; (c) once it is held that 1st respondent is a tenant of ten acres of land only, admittedly there is no default or subletting by 1st respondent; and (d) consequently the appellant is not entitled to any order of eviction. The second appeal was dismissed as a finding of fact could not be interfered with. Aggrieved by the decision of the writ petition and the second appeal, the landlord has filed writ appeal No. 98 of 1967 and L. P. A. 116 of 1967 respectively. As already stated, both the writ appeal and L. P. A. have been referred to us by a Division Bench by its order dated 19-3-1968.

5. Learned counsel for the appellant raised before us the following points:-

(I) The 1st respondent having admitted that he is a tenant of Ac. 10-00 of land the question whether Ac. 20-00 of land are included in the tenancy or not is a question which does not go to the jural relationship of landlord and tenant and is concerned only with extent of land under the tenancy and is therefore with the exclusive jurisdiction of the revenue authorities constituted under that Act and that decision is final and conclusive and cannot be questioned in a Civil Court.

(ii) In view of the provision of the Act, the question whether the relationship of landlord and tenant exists in a given case has to be decided by the Tahsildar and that decision has been made final and conclusive and it cannot be questioned in a Civil Court (iii) In either case, the appellant is entitled to an order of eviction as the Tahsildar has held that the tenant has committed default in payment of rent and has sublet the Act are competent to pass an order under Section 13 of the Act against the sublessee irrespective of whether he is a party to the proceedings.

6. It is now well settled that when an inferior Court, tribunal or body is created for deciding facts, the legislature may pro vide that if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things it shall have jurisdiction to do such things but not otherwise. I(n such cases, it will have jurisdiction to decide whether such state of facts exists but

that decision shall not be conclusive. If such a tribunal or body exercises its jurisdiction without the existence of such state of facts, what it does can be questioned. It is in such case that a tribunal or body cannot give to itself jurisdiction by deciding wrongly that such state of facts exists. The legislature may also clothe the tribunal or body with the jurisdiction to decide finally the existence of facts which are basic for its assumption of jurisdiction. In such a ease, any decision by the tribunal or body in regard to the existence of such state of facts is final and conclusive and cannot be questioned in an ordinary Civil Court. In order to determine whether a given case falls within the first category or second category, the language of the Act, and its aims and objects will have to be considered.

7. The Andhra Pradesh (Andhra Area) Tenancy Act, 1956 was enacted in 1956 to provide for the payment of fair rent by cultivating tenants and for fixing the minimum period of agricultural leases in the State of Andhra. The second section of the Act inter alia gives the definition of a cultivating tenant , holding , landlord etc. Section 3 fixes the maximum rent payable by cultivating tenant to landlord. By section 4 option is given to every landlord and his cultivating tenant to come to an agreement in regard to the vorm of tenancy. Section 5 enables the cultivating tenant and the landlord the agree among themselves in regard to the quantum of rent payable for holding subject to the maximum rent specified in Section 3. By virtue of Section 6, the Tahsildar has been empowered to fix the fair rent for a holding notwithstanding any agreement between the landlord and the cultivating tenant. That se tin lays down the various factors which the Tahsildar has to take into consideration while fixing the fair rent. Section 8 empowers the Tahsildar for making an enquiry to grant remission of rent on an application made by a cultivating tenant in that behalf. By section 10 the minimum period of every lease entered into between the landlord and his cultivating tenant on or after the commencement of the at has been fixed at six years. Section 11 provides that in the event of change in the ownership of any land during the currency of a lease, the cultivating tenant shall be entitled to continue the tenancy on the same terms and conditions as before. By Section 12 provision has been made that in case of the death of the cultivating tenant, his widow and his lineal heirs have been given the option to continue the tenancy for the unexpired portion f the lease on the same terms and conditions on which the deceased-cultivating tenant was holding. Section 13 empowers the Tahsildar to pass an order for eviction of cultivating tenant on fulfillment of the conditions laid down in the Act and on an application made by the landlord for the purpose. Section 14 provides for the termination of the tenancy by the cultivating tenant and surrendering his holding. By Section 15 time has been fixed for delivery of possession of the holding by the cultivating tenant on the expiry of the tenancy. Section 16 provides that any disputes arising under the Act between the landlord and the cultivating tenant including any question relating to the determination of the fair rent or the eviction of a cultivating tenant shall, on application by the landlord or the cultivating tenant, as the case may be, be decided by the Tahsildar after making enquiry in the manner prescribed.

Sub-section (2)l of the section provides for an appeal from the order of Tahsildar to the Revenue Divisional Officer, Section 17 gives overriding effect to the provisions of the Act notwithstanding anything inconsistent therewith contained in any preexisting law, custom, usage, agreement or decree or order of a Court. Section 19 empowers the Government to make rules to carry out the purposes of the Act. The aforesaid provisions clearly indicate that the Act has been enacted for the decision of all the disputes that may arise under the Act in regard to the determination of the fair rent and eviction between a landlord and a cultivating tenant. But jurisdiction is given to the Tahsildar under the Act only in a case where the dispute is between a landlord and a cultivating tenant. The question for consideration is whether the decision of the Tahsildar regarding the existence of relationship of landlord and tenant is within the exclusive jurisdiction of the Tahsildar so as to make that decision final or conclusive or whether that is a decision of a jurisdictional fact which is not final and conclusive, and the correctness of which can be canvassed in a Civil Court.

8. The first contention raised by the learned counsel for the appellant proceeds on the assumption that the Tahsildar has no exclusive jurisdiction to decide the jural relationship of landlord and tenant. He submits that the appellant had averred that the 1st respondent was a tenant for Ac. 30-0 of land, which was denied by the 1st respondent, but he admitted that he was a tenant of only Ac. 10-0 of land, and had nothing to do with the balance of Ac. 20-0. When the 1st respondent admitted that he as a tenant of Ac. 10-0 of land, the jural relationship of landlord and tenant between the appellant and the 1st respondent has been admitted, and the Tahsildar admittedly has jurisdiction to decide the question of eviction finally and conclusively between the parties. The argument mis that the question whether Ac. 10-0 of land was leased out or Ac. 30-0 of land was leased out concerns the terms of the tenancy agreement and does not in any manner concern the relationship of landlord and tenant. In other words, it is contended that once the jural relationship of landlord and tenant is admitted the Tahsildar gets the jurisdiction to pro deed under the provisions of the Act irrespective of the fact as to whether the jural relationship has been admitted in regard to the extent of the land of which the eviction is sought by the landlord.

9. In support of the argument, reliance is placed on the definition of "cultivating tenant": in Section 2 (c) of the Act which reads:

"(c) "cultivating tenant" means a person who cultivates by his own labour or by that of any other member of his family or by his supervision and control, any land belonging to another under a tenancy agreement; express or implied, but does not include and mere intermediary".

Stress was laid on the expression 'any lnd belonging to another' and it was contended that this definition extends to any land, and it is not necessary that the addition or proof of tenancy should be with respect to the whole of the land in question. If such a relationship is admitted or proved

in respect of a part of the land in question it is sufficient to bring the tenant under the definition of 'cultivating tenant'. It is argued that the aforesaid proposition is further supported by the definition of 'holding' in Section 2 (e) of the Act which reads that:

"(e) 'holding' means a parcel of land held by a cultivating tenant;"

The definition of 'landlord' in Sec. 2 (f) which reads:

"(f) 'landlord' means the owner of a holding or part thereof who is entitled to evict the cultivating tenant from such holding or part, and includes the heirs, assignees, legal representatives of such owner, or person deriving rights through him:"is relied upon and stress is laid on the expression 'owner of a holding or part thereof. The argument is that to bring a person within the definition of landlord it is not necessary that he should be the owner of the whole of the holding. It is sufficient that he is the owner of a part f it and is entitled to evict the cultivating tenant from that part. It is also argued that in case the aforesaid definitions are restricted to extent of lands which are admitted or proved to have been taken by the tenant under a lease, the Court will be adding certain words or expressions to the provisions of the Act which it is not competent to do.

10. Learned counsel for the 1st respondent contends that the concept of a tenant cannot be separated from the land of which he is the tenant. In order to bring about the relationship of landlord and tenant, the following factors are necessary. (1) the parties; (2) the subject-matter or immovable property; and (3) the demise or partial transfer.

11. Section 105 of the Transfer of Property Act defines a lease of immovable property as "a transfer of a right to enjoy such property". The expression such property' clearly indicated that a lease can come into existence only I regard to a particular and distinct property. It is impossible to come to a conclusion that if a lease is admitted or proved in respect to part of the property, the relationship of land lord and tenant will extend to whole of the property which the landlord claims to be under lease. The definitions relied upon by the learned counsel for the appellant in support of his contention do not help him. The expression 'any land' in the definition of 'cultivating tenant' cannot be given the meaning the learned counsel seeks to give. The word 'any' has no particular significance in the definition and what the definition means is that a cultivating tenant is a person who cultivates land in the manner prescribed in that section under the tenancy agreement expressed or implied. Even under this definition what is necessary to bring within the definition of 'cultivating tenant' is the existence of a tenancy agreement and such an agreement cannot be considered de hors the extent of the land agreed to be leased between the parties. The definition of 'holding' also does not take the case of the appellant any further. It only means that the land held by the cultivating tenant is a holding and nothing more. The definition of 'landlord' where it takes in the owner of a part of the holding also does not help the appellant. That

definition clearly states that the landlord must b3 in a position to evict the cultivating tenant from that part of the holding. The definition of the 'cultivating tenement' when read with the definition of the 'landlord' which should be rightly done, can only mean that the person seeking to evict from part of a holding is the owner of such part holding, and the person in possession of that part cultivates it under a tenancy agreement with him or his predecessor-in-title. The definition does not clothe the person as a landlord even in respect of that part of a holding of which there is no relationship of landlord and cultivating tenant between him and the person in possession thereof. Merely because the tenancy in regard to the part of the land in dispute is admitted, it cannot be postulated that the relationship of landlord and tenant exists in regard to the disputed part of the lnd in question. If such interpretation is given, it would mean that if a landlord wants to evict the cultivating tenant from a holding of which he is admittedly cultivating tenant, he has only to allege that the said person is the cultivating tenant for an extent of land much larger than the admitted extent of land and make allegations of default in payment of rent and sub-letting by the tenant. We are therefore unable to accept the contention of the learned counsel for the appellant that when the jural relationship of landlord and tenant is admitted in respect to a part of the land in dispute , the question whether the tenant is a cultivating tenant of the balance of the land is not a question concerning the jural relationship of landlord and tenant.

12. The next argument of the learned counsel for the appellant that the decision of the Tahsildar on the relationship of landlord and tenant is conclusive and final is based on the provisions of Section 16 (1) of the Act. Section 16 (1) reads that-

> "16 (1) Any dispute arising under this Act between a landlord and a cultivating tenant, including any question relating to the determination of fair rent or the eviction of a cultivating tenant shall, on application by the landlord or the cultivating tenant, as the case may be decided by the Tahsildar after making an inquiry in the manner prescribed."

Laying stress on the expression 'Any dispute arising under this Act' and also the words 'including any question' it is argued that every dispute that arises under the provisions of the Act is a dispute with the exclusive jurisdiction of the Tahsildar. A dispute whether the parties are related as landlord and cultivating tenant is also a dispute arising under the provision of the Act and therefore is within the exclusive jurisdiction of the Tahsildar. It is also argued that the use of the word 'including' enlarges the definition and when such a word is used the words and phrases must be construed as comprehending, not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they hall include. It is argued that the ambit of Section 16 (1) of the Act has not been restricted to the decisions the Tahsildar has to give between the landlord and cultivating tenant but also gives him jurisdiction to decide the jural relationship of landlord and tenant.In support of the meaning to be

given to the word 'including' reliance is placed upon the decision of a Division Bench of this Court, consisting of the Chief Justice and one of us in Taj Mahal Hotel v. C. I. T. Hyderabad, the learned Judges while considering the definition of plant in sub-section (2) of Section 10 (5) of the Income-tax Act made a reference to the observation of Lord Watson in *Dilwarth v. Commissioner of Stamps*[1], that 'include' is very generally used in interpretation clause in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, these words and phrases must be construed as comprehending, not only such things as they signify according to their nature and import, but also those things which the interpretation clause declares that they shall include. The word 'include' is they shall include. The word 'include' is susceptible of another construction which may become imperative if the context of the act is sufficient to show that it as not merely employed for the purpose of adding to the natural significance of the word or expressions defined. When it is mentioned that a particular definition 'includes' certain things, it should be taken that the Legislature intended to settle a difference of opinion on the pointer wanted to bring in other matters that would not properly come within the ordinary connotation of the word or expression or phrase in question (vide *Madras Central Urban Bank Ltd. v. Corporation of Madras*[2],*). The legislature uses the word 'means' where it wants to excuses the word* 'means' where it wants to exhaust the significance of the term defined haust the significance of the term defined and the word 'includes' where it intends that while the term defined should retain its ordinary meaning its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative but not exhaustive (vide *Province of Bengal v. Hingul Kumari*[3],*).*

13. The word 'including' in Sec. 16 (1) of the Act does not seem to have been used in order to enlarge the meaning of the words or phrases occurring in the first limb of that section. The first limb clearly provides for any dispute arising under the Act which would, according to its nature and import, also take in question relating to the determination of fair rent or the eviction of a cultivating tenant which have been included in the definition , for, the questions relating to the determination of fair rent or eviction of a cultivating tenants are essentially disputes arising under the Act and not outside the Act so as to make their specific mention as enlarging the scope of Section 16 (1) of the Act. That being so, the word 'including 'in Section 16 (1) does not enlarge the expression "in (any?) disputes arising under the (this?) Act". But, the expression in question 'relating to the determination of fair rent or eviction of a cultivating tenant' is only illustrative. Seshachalapathi, J, in *Ramanaiah v Avula Bujji Reddy*[4], observed that "the expression "including ' which has been regarded always as a term of enlargement, shows that the two specified categories of only illustrative and that the section is designed to comprehend all disputes between the landlord and the tenant including those which are specifically recited".

14. Learned Counsel for the respondent suggested an interpretation which would enlarge the scope of Section 16 (1) of the Act and argued that any dispute arising under the Act may, according to its nature and import, be restricted only to the applications provided for in various sections of the Act, but may not cover the questions which the Tahsildar is required to decided before he determines the fair rent order eviction of the tenant. According to him, the fair rent has to be decided on a consideration of the various factors enumerated in Section 6 (2) (a) to (g). Similarly before ordering eviction of a tenant, the Tahsildar has to come to a conclusion whether the grounds specified in clause (a) to (g) of that section are in existence. The argument is that if Section 16 (1) consists only of the expression 'any disputes arising under this Act between a landlord and a cultivating tenant'. it may not include the decision on various factors enumerated under Section 6 and there various grounds enumerated in Section 13 to make that position clear the legislature has included any question relating to the determination of fair rent or the eviction of a cultivating tenant in Section 16 (1) of the Act. In the case before us, it is not necessary for us to go into the argument advanced by the learned counsel for the respondent.The question before us is whether the dispute regarding the relationship of landlord and tenant is included within Section 16 (1) of the Act so as to give exclusive jurisdiction to the Tahsildar. Even if the dispute which the Tahsildar has jurisdiction to decide under Section 16 (1) of the Act is a dispute arising under the Act it must be between a landlord and a cultivating tenant. The Tahsildar has no jurisdiction to decide a dispute which is not between a landlord and cultivating tenant. Similarly, the Tahsildar has been given the jurisdiction to decide questions relating to the determination for the fair rent or the eviction of ma cultivating tenant only if such questions arise between a landlord and cultivating tenant. A reading of this section clearly shows that the necessary condition for the exercise of the jurisdiction by the Tahsildar under Section 16 (1) of the Act is the existence of the relationship of landlord and cultivating tenant. As stated earlier, the sections of the Act give the Tahsildar necessary power to decide questions or disputes arising between a landlord and his cultivating from providing that the decision of the jural relationship of landlord and cultivating tenant would also be within the exclusive jurisdiction of the Tahsildar. On the contrary, the provisions of the Act, as extracted above, clearly indicate that the jurisdiction of the Tashildar arises only if the jural relationship of landlord and tenant exists but not otherwise. That being so, the decision of the question whether the relationship of the landlord and cultivating tenant exists is a decision regarding a jurisdictional factor, as termed by the Supreme Court, and such a decision is neither conclusive nor final does not oust the jurisdiction of a Civil Court to entertain proceedings in which the question of jural relationship of landlord and tenant arises.

15. We all now proceed to consider the decisions of the Supreme Court and of this High Court cited before us by the learned counsel for both the parties. We propose to deal with the Supreme Court decisions in chronological order.

16. The first decision cited is Brij Raj Krishna v. Shaw and Bros.., . The appeal before the Supreme Court arose out of a suit brought by the tenant for directing that his eviction was illegal, ultra vires and without jurisdiction. The Rent Controller whose order was sought to be set aside in the Civil Court had held that the tenant had committed default in payment of rent. The landlord contended that having regard to the scheme of the Bihar Buildings (Lease Rent and Eviction) Control Act, 1947 the House Controller was fully competent to decide whether the condition precedent to decide whether the condition precedent to the eviction has been satisfied and once the decision has been arrived at, it cannot be questioned in a Civil Court.

17. The learned Judges, after setting out the provisions of the Act observed that the Act had set up a complete machinery for the investigation of those matters upon which the jurisdiction of the Controller t order eviction of a tenant depends and it expressly makes his order final and subject only to the decision of the Court. The Act empowers the Controller alone to decide whether or not there is non-payment of rent and his decision on that question is essential before an order can be passed by him under Section 11. In para 7 it was observed that:

> ".....the Act has entrusted the Controller with a jurisdiction, which includes the jurisdiction to determine whether there is nonpayment of rent or not, as well as the jurisdiction, on finding that there is non-payment of rent, to order eviction. of a tenant. Therefore, even if the Controller may be assumed t have wrongly decided the question of non-payment of rent, which by no means is clear his order cannot be questioned in a Civil Court".

The case cited does not decide the question as to whether the House Controller had the exclusive jurisdiction to decide the question whether the parties were landlord and tenant. On the other hand it is evident from the decision that the parties were landlord and tenant and the only question was whether the tenant had committed default in payment of rent and was therefore liable for eviction. The Supreme Court held that the House Controller had the exclusive jurisdiction to decide those matters and therefore the decision cannot be questioned in a Civil Court.

18. In Babulal v. Nanda, their Lordships of the Supreme Court considered the provisions of Sec. 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act of 1947. In that case, the Landlord had earlier filed a suit for eviction of the tenant and other persons whom he stated to be trespassers. The Small Cause Court held that the other persons were not the sub-tenants and the subletting by the tenant in their favour being contrary to law, the letter had deprived himself of the protection of the Act. Accordingly that Court passed a decree for eviction of all the defendants in the suit brought by the landlord. Thereafter the tenant and the so-called sub-tenants filed a suit in the Bombay City Civil Court praying for a declaration that the 1st plaintiff was a

tenant of the defendants and was entitled to protection under the Act and that the 2nd and 3rd plaintiffs were lawful sub-tenants of the first plaintiff and were entitled to possession, use and occupation of the premises as sub-tenants thereof. The jurisdiction of the City Civil Court was challenged by the landlord and it was decided that it had jurisdiction to entertain the suit but dismissed the suit on the ground that there had been no lawful subletting by the first plaintiff of the premises to the 2nd and 3rd plaintiffs. Against that decision, there was an appeal by the plaintiffs to the Bombay High Court which was dismissed. The High Court disagreed with the view of the Judge of the City Civil Court that he had jurisdiction to entertain the suit filed by the plaintiffs. After referring to the plaint and the nature of the relief asked for by the plaintiffs, their Lordships held that the plaintiffs had based their case on the provisions of the Act. The Supreme Court observed:-

"7. In a suit for recovery of rent where admittedly one party is the landlord and the other the tenant, Section 28 of the Act explicitly confers on Courts specified therein jurisdiction to entertain and try the suit and expressly prohibits any other Court exercising jurisdiction with respect thereto. Similarly, in a suit relating to possession of premises where the relationship of landlord and tenant admittedly subsists between the parties, jurisdiction to entertain and try any such a suit is in the Courts specified in Section 28 and no other. In all such suits or proceedings the Courts specified in Sec. 28 also have the jurisdiction to decide all claims or question arising out of the Act of any of its provisions. The words employed in Section 28 make this quite clear. Do the provisions of Section 28 cover a case where in a suit one party alleges that he is the landlord and denies that the other is his tenant or vice versa and the relief asked for in the suit is in the nature of a claim which arises out of the Act or any of its provisions? The answers must be in the affirmative on a reasonable interpretation of Section 28.....

.....The suit , in substance , was a denial of the right of the defendants as tenants".

Further in Para 8 their Lordships held -

> "The present suit filed in the City Civil Court raised in substance a claim to the effect that the plaintiffs were the tenants of the premises within the meaning of the Act. Such a claim was one which arose out of the Act or any of its provisions. The suit related to possession of the premises and the right of the landlord to evict any of the plaintiffs was denied on the ground that the first plaintiff was a tenant within the meaning of the Act and the premises had been lawfully sublet by him to the second and third plaintiffs. The City Civil Court was thus called upon to decide whether first plaintiff was a tenant of the premises within the meaning of the Act and whether he had the meaning of the Act and whether he had lawfully sublet the same to the second and third plaintiffs. The City Civil Court, therefore, had to determine whether the plaintiffs had established their claim to be in

possession of the premises in accordance with the provisions of the Act. As the tenancy of the first plaintiff had been terminated by the landlord, this plaintiff could resist eviction only if he established his right to continue in possession under the provisions of the in possession under the provisions of the Act. On the termination of the tenancy of the first plaintiff, outside the provisions of the Act, the sub-tenancy would come to an end and the landlord would be entitled to him possession. This could be denied to him only if the second and third plaintiffs could establish that the premises had been lawfully sublet to them and under Section 14 of the Act they must be deemed to be tenants of the premises. In other words, the City Civil Court could not decree the suit of the plaintiffs unless their claim to remain in possession was established under the Act or any of its provisions. Independent of the Act the plaint in this suit disclosed no cause of action.....Section 28 applies to a suit where admittedly the relationship of landlord and tenant within the meaning of the Act subsists between the parties. The plaint in the suit in the City Civil Court admits that the defendants were landlords of the premises at various stages and the plaintiffs were their tenant. The suit, therefore, was essentially a suit between a landlord and a tenant. The suit did not cease to be a suit between a landlord and a tenant merely because the defendants denied the claim of the plaintiffs. Whether the plaintiffs were the tenants would be a claim or question arising out of the Act or any of its provisions which had to be dealt with by the Court trying the suit. On a proper interpretation f the provisions of Section 28 the suit contemplated in that section is not only a suit between a landlord and a tenant in which that relationship is admitted but also a suit in which it is claimed that the relationship of a landlord and a tenant within the meaning of the act subsists between the parties. The Courts which have jurisdiction to entertain and try such a suit are the Courts specified in Section 28 and no other". Their Lordships therefore held that the City Civil Court had no jurisdiction to entertain and that the suit could be entertained only by the Courts specified in Section 28, Bombay, Act.

19. We have exhaustively extracted passage from the aforesaid decision of the Supreme Court as the said decision was relied upon by the learned counsel for the appellant in support of his second argument. He laid great stress on the observation of the Supreme Court that the provisions of the Bombay Act cover a case where in a suit one party alleges that he is the landlord and denies that the other is his tenant or vice versa. Relying upon this, it is argued that the relationship of landlord and tenant is within the exclusive jurisdiction of the Tahsildar in the instant case also. This argument overlooks the other observations of their Lordships wherein they clearly say that in that particular suit, the relationship of landlord and tenant was sought to be established under the provisions of the Bombay Act. In other words, the plaintiffs therein claimed that there was subsisting tenancy between them and the landlords in view of the provisions of the Bombay Act.

The suit therein was based on the provisions of the Bombay Act and as the relationship of landlord and tenant was claimed under the provisions of that Act, their Lordships decided that it was a matter which was within Section 28 of the Act and the Court mentioned in that section also be had jurisdiction to entertain such a suit. In the instant case, the relationship of landlord and cultivating tenant is not at all claimed under any of the provisions of the Act. Already, while giving a summary of the various provisions of the Act we have indicated that there is no section which says that on the happening of certain events or in the event of certain existing circumstances a particular person would be considered as a cultivating tenant of a particular landlord. In our opinion, therefore, this decision does not inn any manner help the appellant. On the other hand, para 8 clearly shows that the courts mentioned in Section 28 can entertain suits wherein admittedly the relationship of landlord and tenant within the meaning of the Act subsists between the parties.

20. Gajendragadkar, J., (as he then was) speaking for the Supreme Court in Magiti Sasamal v. Pandab Bissoi, while considering the provisions of Section 7 (1) of the Orissa Tenants Protection Act of 1948 observed that-

> ".....Section 7 (1) postulates the relationship of tenant and landlord between the parties and proceeds to provide for exclusive jurisdiction of the Collector to try the five categories of disputes that may arise between the landlord and the tenant. The disputes which are the subject-matter of Section 7 (1) must be in regard t the five categories. That is the plain and obvious construction of the words "any dispute as regards". On this construction it could be unreasonable to hold that a dispute about the status of the tenant also falls within the purview of the said section. The scheme of Section 7 (1) is unambiguous and clear. It refers to the tenant and landlord as such and it contemplates disputes of the specified character arising between them. Therefore, in our opinion even on a liberal construction of Section 7 (1) it would be difficult to uphold the argument that a dispute as regards the existence of the relationship of landlord and tenant falls to be determined by the Collector under Section 7 (1)".

Section 13 of the Act also postulates the relationship of tenant and landlord between the parties and proceeds to give exclusive jurisdiction to the Controller to order eviction in case the grounds mentioned in the said section exist.

21. The argument advanced by the learned Counsel for the appellant by the learned Counsel for the appellant that Section 7 (1) of the Orissa Act uses the expression any dispute between the tenant and the landlord as regards the five categories mentioned therein whereas Section 16 (1) of the Tenancy Act uses the expression any disputes arising under the Act. A distinction was sought to be drawn and it was argued that the provisions of Section 7 (1) of the Orissa Act are not in pari

materia with the provisions of Section 16 (1) of the Tenancy Act and therefore the decision of the Supreme Court cannot apply to the instant case.

22. Our attention was drawn to the distinction between the a two sections made be Seshachalapathi, J., in (1962) 2 Andh WR 416 at. p. 419. The learned Judge observed that the provisions of Section 7 (1) of the Orissa Act and Section 16 (1) of the Tenancy Act were differently worded. He went on to hold that under Section 16 (1) of the Tenancy Act the question whether or not a person who claims the benefit of the Act is a cultivating tenant and whether his tenancy still subsists is a question that is ancillary to the exercise of the jurisdiction of the tenancy Act and therefore the Tahsildar has a right to determine whether between the parties to a dispute there is a subsisting relationship of landlord and tenant. The question before the learned Judge was not whether the Tahsildar has exclusive jurisdiction to decide whether there is the relationship of landlord and tenant. The argument advanced was that in a case where the jural relationship of landlord and tenant is disputed the Tahsildar has no jurisdiction to entertain the matter at all. That argument was rejected by the learned Judge and he held that the Tahsildar has a right to determine the matter but he did not hold that the decision was final and conclusive and could not be questioned in a Civil Court.

23. The Supreme Court in Durga Singh v. Tholu, dealt with the provisions of Section 77 (3) of the Punjab Tenancy Act, 1887. The appellant before the Supreme Court filed a suit for possession and mesne profits against the respondents who contended that they were the occupancy tenants of those lands for the last two or three generations and that the suit was not cognizable by a Civil Court. The trial Court decreed the suit of the appellant as against all the respondents. the District Judge dismissed the appeal and confirmed the decree of the trial court. The Judicial Commissioner allowed the appeal holding that the respondents were occupancy tenants of the lands and consequently the provisions of Section 77 (3) read with the first proviso thereto barred the jurisdiction for the Civil Court. It was argued before their Lordships of the Supreme Court that for a suit to be barred under Section 77 (3) of the Act from the cognizance of a Civil Court two conditions have to be satisfied. The first is that the suit should relate to one of the matters described in sub-section (3)_ and the second is that the existent e of the relationship of landlord and tenant should be admitted by the parties. After referring to Section 77 (3) of the Act and the proviso thereunder and also entries (e) and (d) under that proviso it was observed-

> ".....that not only items (d) and (e) but every other item in the three groups relates to a dispute between tenants on the one hand and the landlord on the other. There is no entry or item relating to a suit by or against a person claiming to be a tenant and whose status as a tenant is not admitted by the landlord. It would, therefore, be reasonable to infer that the legislature barred only those suits from the cognizance of a Civil Court

where here was o dispute between the parties that a person cultivating land or who was in possession of land was a tenant".

Their Lordships also considered the decision rendered by the Supreme Court in . The Act which we are now considering, does not also provide for the settlement of any dispute as to the relationship of landlord and a cultivating tenant.

24. the appellant in Desika Charyulu v. State of A. P., was the proprietor or inamdar of a shrotriem village. The Government of Madras purporting to act under the powers conferred by the Rent Reduction Act, 1947 appointed a Special Officer to conduct an enquiry as to the precise reduction to be effected in the rent payable to the appellant by persons in cultivation of the lands in the appellant's shortrium and after considering his report directed a reduction of rents. Almost simultaneously proceedings were taken by the Settlement Officer appointed under the Madras Estates (Abolition and Conversion into Ryotwari) Act of 1948 for determining whether or not the shortrium should be taken over by Government and the officer gave his decision against the appellant. The appellant filed an appeal to the Tribunal constituted under the Abolition Act and the appeal was dismissed. The appellant then invoked the jurisdiction for the High Court of Madras under Article 226 of the Constitution of India to set aside the above proceedings. He contended that the shortrium which he owned did not fall within the class of "estates" to which either of the two enactments applied and that consequently the notification of Government under the Settlement Officer and the Tribunal under the Abolition Act were wholly without jurisdiction. The writ petition was, however, withdrawn by the appellant for the reason that a suit in a Civil Court for adjudicating upon the several issues of facts and law was more appropriate. The Appellant thereafter filed a suit in the court of the Subordinate Judge for a declaration that the shortrium was not an 'estate' within the rent Reduction Act nor an 'inam estate' within the Abolition Act and for an injunction restraining the State from enactments as regards the lands of the appellant in the said shortrium. The suit was dismissed by the learned Subordinate Judge and the High court on appeal affirmed the dismissal.Thus. two principal questions arose for determination before the Supreme Court (1) whether the Shortrium village is not an "estate" within the Rent Reduction Act; and (2) whether it is not an "inam estate" under the Abolition Act. Both the Subordinate Judge as well as the High Court answered the first question in the affirmative and in regard to the second, the High Court decline to investigate that matter on the ground that the same could not be agitated in a Civil Court. That was the third question before the Supreme Court. The Supreme Court first considered the question whether the shortrium is an estate within the scope of Rent Reduction Act and confirmed the decision of the High Court and the Subordinate Judge in that behalf. While considering the second question as to whether the shortrium was an inam estate their Lordships referred to the provisions of Section 9 (1) of the Abolition Act and in para 27 of the Judgment their Lordships referred to the famous passage of

Lord Esher in *Queen v. Commr. for Special Purposes of The Income-tax*[5], which reads:

> "When an inferior court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, shall have jurisdiction to do certain things, but not otherwise. There it is not for them conclusively to decide facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that if a certain state of facts exist and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do certain things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists. and, if they exercise the jurisdiction without its existence, what they do may be questioned and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases, I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts, to exist because the legislature gave them jurisdiction to determine all the facts, on which the further exercise of their jurisdiction depends and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction".

Their Lordships observed:-

> "It is manifest that the answer to the question as to whether any particular case falls under the first or the second of the above categories would depend on the purpose of the statute and its general scheme, taken in conjunction with the scope of the enquiry entrusted to the tribunal set up and other relevant factors. In the present case, this is determined by terms of Section 9 (1) which prescribes and delimits the functions of the Settlement Officer and thus in effect, of the appellate forum. This sub-section enjoins on or empowers the Settlement Officer to determine whether "any inam village" is "an inam estate or not" and the object of the Act is to "abolish" only "inam estates". This determination involves two distinct matters in view of the circumstance that every "inam 'village" is not necessarily "an inam estate" viz., (1) Whether a particular property is or is not an "inam village" and

(2) Whether such a village is "an inam estate" within the definition in Section 2 (7). The first of these questions whether the grant is of an "inam village" is referred to in Section 9 (1) itself as some extrinsic fact which must pre-exist before the Settlement Officer can embark on the enquiry contemplated by that provision and the Abolition Act as it stood at the date relevant to this appeal, makes no provision for this being the subject of enquiry by the Settlement Officer.

28. Where therefore persons appearing in opposition to the proceedings initiated before the Settlement Officer under Section 9 question the character of the property as not falling, within the description of an "inam village" he has of necessity to decide the issue, for until he holds that this condition is satisfied, he cannot enter on the further enquiry which is the one which by Section 9 (1) of the Act he is directed to conduct. On the terms of Section 9 (1) the property in question being an "inam village" is assumed as a fact on the existence of which the competency of the Settlement Officer to determine the matter within his jurisdiction rests and as there are no words in the statute empowering him to decide finally the former, he cannot confer jurisdiction on himself by a wrong decision on this preliminary condition to his jurisdiction. Any determination by him of this question therefore, is (subject to the result of an appeal to the Tribunal) building on the parties only for the purposes of the proceedings under the Act, but no further. The correctness of that finding may be questioned in any subsequent legal proceedings in the ordinary courts of the land where the question might arise for decision. The determination by him of the second question whether the "inam village" is an inam estate is, however, within his exclusive jurisdiction and in regard to it the jurisdiction of the Civil Court is clearly barred".Then their Lordships went on to hold that as it had been found while dealing with the applicability of the Rent Reduction Act that the shortrium was an inam village, the result would be that the preliminary condition would have been satisfied and the Settlement Officer was therefore competent to record a finding that the inam village was an inam estate. The decision whether the inam village was an inam estate was held to be within the exclusive jurisdiction of the Settlement Officer and therefore barred from the jurisdiction of the Civil Court.

25. In Mohd. Mahmood v. Tikam Das, the landlord had earlier brought a suit for ejectment of his tenant after serving a notice of termination wherein a consent decree for ejectment was passed. The sub-tenant in occupation had not been impleaded as a party defendant to the suit. The sub-tenant after serving a notice under Section 15 (2) of the Madhya Pradesh Accommodation Control Act, 1961 instituted a suit for declaration against the landlord and the tenant that he had become a direct tenant under the landlord by virtue of Section 16 (2) of the M. P. Accommodation Control Act, 1961. The question for consideration before the Supreme Court was whether in view of Section 45 (1) of the Act, the Civil Court was competent to entertain the suit. Section 15 (3) of the said Act empowers the Rent Controlling Authority to decide whether a

sub-letting was lawful where the landlord disputed the same. As the Rent Controlling Authorities had the power to decide the lawfulness of the subletting, it was held that the Civil Court is clearly debarred by virtue of Section 45 (1) of the aforesaid Act from deciding that question. It may be noted that in thinks case also, the person who was claiming to be a sub-tenant was claiming a right given to him under the Act and their Lordships of the Supreme Court came to the conclusion that such a matter was within the jurisdiction of the Rent Controlling Authority and the Civil Court therefore had no jurisdiction to entertain the matter.

26. The Supreme Court in Rama Iyer v. Sundaresa, considered the provisions of Sections 6-B, 3 (3) of the Madras Cultivating Tenants Protection Act and the scope of Section 115, Civil Procedure Code. The facts of the case are that the respondent before their Lordships claiming to be the cultivating tenant of the appellant deposited certain amount as rent in the Revenue Court under Section 3 (3) of the Madras Cultivating Tenants Protection Act, 1955 and filed an application before the Court praying for a declaration that the amount deposited represented the correct amount of rent due from him. The appellant denied that the respondent was his cultivating tenant. The Revenue Court held that the respondent was not a cultivating tenant of the appellant and therefore could not claim the benefit of Section 3 (3) of the said Act. The respondent thereupon filed a petition in revision before the Madras High Court under Section 6-B of the Act read with Section 115 of the Civil Procedure Code. The High Court came to the conclusion that the respondent was a cultivating tenant of the appellant and allowed the revision deposited by the respondent represented the correct amount due from him to the appellant.The appellant contended in the Supreme Court that the respondent was not a cultivating tenant was a finding of fact and that the High Court had no jurisdiction to set it aside on revision, whereas it was contended by the respondent that that finding was in respect of a collateral fact upon the existence of which the jurisdiction of the Revenue Court under Section 3 (3) depended and the High Court under Section 3 (3) depended and the High Court had ample power to revise the finding under Section 6-B of the Act. After setting out the provisions of the Act their Lordships observed that in case of disputes between the landlord and the cultivating tenant, the Revenue Divisional Officer is authorised to entertain and decide applications by the landlord for eviction and resumption of possession and by the cultivating tenant for restoration of possession and to impose penalties on the landlord or the tenant for infraction of Section 4-B. To attract the jurisdiction of the Revenue Divisional Officer, there must be a dispute between a landlord and cultivating tenant. The existence of the relation of landlord and cultivating tenant between the contending parties is the essential condition for the assumption of jurisdiction by the Revenue Divisional Officer in all proceedings under the Act. The Tribunal can exercise its jurisdiction under the Act only if such relationship exists. If the jurisdiction for the Tribunal is challenged, it must enquire into the existence of the preliminary fact and decide if it has jurisdiction. But its decision on the existence of this preliminary fact is not final such decision is subject to review by

the High Court in its revisional jurisdiction under Section 6-B.

27. In Custodian Evacuee Property, Punjab v. Jafran Begum, rendered the provisions of the Administration of Evacuee Property Act, 1950, the question that arose for consideration was the interpretation of Section 46 of the said Act. The house in dispute belonged to one M who died sometime in the year 1922. In 1947 the house was in possession of his son M. R. and his widow the respondent. Sometime after partition M. R. migrated to Pakistan. Thereafter, a notice was issued under Section 7 of the Act to D. son of M. R. to show cause why the house be not declared as evacuee property. No notice was however issued to the respondent. D appeared before the Deputy Custodian and admitted that his father had migrated to Pakistan and the house was therefore declared to be evacuee property. No appeal was taken against this order which thus became final. Later on, the respondent filed an application before the Custodian claiming that Mhad made a will bequeathing the house to her and therefore she was the owner of the entire property. The custodian held that under the Mohammadan Law a person could to will away more than one-third of his property and as it had not been proved that the house willed away by M was one-third of his entire property or less, the will could not be acted upon. In consequence, the application was dismissed. The respondent later applied for review of the order of the Custodian and that review application was dismissed on the ground that it was belated. She then went in revision to the Deputy Custodian General but her revision was dismissed. Thereafter, the Deputy Custodian General suo motu reviewed the earlier order holding that the respondent as the widow was entitled to one-eighth share under the Mohammadan Law. He therefore held that only seven-eighth share of the house became evacuee property and one-eighth share of the respondent was not evacuee property.In the meanwhile, the respondent had filed a suit on the basis of the will of M and prayed for permanent injunction against the Custodian Evacuee Property, Punjab restraining them from evicting her from the house in dispute. The suit was dismissed by the trial Court holding that the Civil Court had no jurisdiction to decide the matter in view of the provisions of Section 46 of the Act. On appeal, the Additional District Judge also came to the conclusion that the Civil Court had no jurisdiction to entertain the suit and therefore dismissed the appeal. On further appeal to the High Court, the Full Bench held that the question whether certain property was or was not evacuee property was determinable by the Custodian but the-determination of the Custodian on a question of title of such question arose was not final and the question of title could be reopened in the Civil Court and was to be finally determined by such Court. It is against this decision, an appeal was preferred to the Supreme Court. Their Lordships after considering the scheme of the Administration of Evacuee Property Act, 1950 and the provisions of Section 7 of the Act held-

> "Section 7, empowers the custodian to give notice, where he is of opinion that certain property is evacuee property, to the person interested and after holding such inquiry into

the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property. It is clear in view of the definition of "evacuee property" to which we have already referred, that two questions will arise in every case where the Custodian has to declare whether a property is evacuee property. These two questions are; (I) whether a person has or has not become an evacuee and (ii) whether the property ion dispute belongs to him. Both these questions have to be decided under Section 7 of the Act by the Custodian".

In para 9 their Lordships went on to observe:

"Under Section 7 the Custodian has to determine whether certain property is or is not evacuee property. To determine that he is to find out whether a particular person is or is not an evacuee. Having found that, he is to find whether the property in dispute belongs to that person. If he comes to the conclusion that the property belongs to that person, he declares the property to be evacuee property. Now there is nothing inn Section 7 which shows that the Custodian cannot enter into all questions whether of fact or of law in deciding whether certain property belongs to an evacuee. There is no reason to hold that under Section 7 the Custodian cannot decide what are called complicated questions of law or questions of title".

In para 10 it was observed:-

"It may be added that the only question to be decided under Section 7 is whether the property is evacuee property or not and the jurisdiction of the Custodian to decide this question does not depend upon any finding on a collateral fact. Therefore there is no scope for the application of that line of cases where it has been held that where the jurisdiction of a tribunal of limited jurisdiction depends upon first finding certain state of facts. it cannot give itself jurisdiction on a wrong finding of that state f facts. Here under Section 7 the Custodian has to decide whether certain property is or is not evacuee property and his jurisdiction does not depend upon any collateral fact being decided as a condition precedent to his assuming jurisdiction. In these circumstances, Section 46 is a complete bar to the jurisdiction of Civil or Revenue Courts in any matter which can be decided under Section 7".

Learned Counsel for the appellant relied upon this decision and contended that the Supreme Court has now changed it earlier view and has decided that once a matter is within the jurisdiction of an authority mentioned in the Act, a decision on that matter becomes final and conclusive and cannot be questioned in a Civil Court. We do not find anything in the decision of their Lordships to support this contention for the learned counsel. Their Lordships in para 10 of

the judgment have clearly stated that as the jurisdiction of the custodian to decide the question whether certain property is or is not evacuee property does not depend upon any collateral fact there is no scope for the application of that line of cases where it has been held that where the jurisdiction of a tribunal of limited jurisdiction depends upon first finding, certain state of facts, it cannot give itself jurisdiction on a wrong finding of that state of fact. Section 7 of the Administration of Evacuee Property Act does not say that in case of an evacuee property the custodian would exercise certain jurisdiction. On the contrary, it gives jurisdiction to the custodian to decide whether a particular property is a evacuee property or not. That being so, there is no collateral fact on the existence of which the jurisdiction of the Custodian to decide whether a particular property is an evacuee property or not depends . this decision turns entirely upon the specific provisions of Sec. 7 of the Evacuee Property Act and cannot be regarded as changing the view expressed by the Supreme Court in the earlier cases as is clear from para 10 of the judgment extracted above.

28. Our attention was drawn by the learned counsel for the respondent to a latest decision of the Supreme Court in C. A. No. 899 of 1966 rendered on 12-9-1969 (. The 1st respondent in the appeal was a tenant of a shop which belongs to the 1st appellant. The 1st appellant had earlier applied to the Rent Control and Eviction Officer, Dehra Dun for an order for ejecting the respondent on the plea that the 1st respondent Gokal Channd had committed default in paying rent. The concerned Officer passed an order observing that the tenant was not in occupation of the shop and had let it out to another person. He accordingly declared that the shop was vacant and allotted it to one Kishorilal , Kishorilal then applied to the Officer that the shop allotted tom him was in illegal occupation of Rawalchand son of Gokal Chand. The concerned officer declared that Gokal Chand the previous tenant had vacated the shop and that Rawal Chand was in illegal occupation of the shop and he accordingly issued a notice under Section 7-A (3) of the U. P. (Temporary) Control of Rent and Eviction Act, 1947, Gokal Chand then filed a civil suit in the Court of the Munsif, Dehra Dun for a declaration that he was an allottee and a tenant of the shop and that he was in possession in that capacity and he added the landlord and Kishorilal as party-defendants. The trial Court held that Gokal Chand had at no time vacated the shop nor was his tenancy terminated. He accordingly made an order declaring that Gokal Chand was an allottee and a tenant of the shop and was entitled to remain in occupation of the same. An appeal against that order to the District Court was dismissed and a second appeal to the High Court was also unsuccessful. In the Supreme Court it was alleged by the landlord and Kishorilal that the order of the Civil Court was without jurisdiction. They relied upon the provisions of Sections 3, 7 and 16 of the Act. After referring to those sections their Lordships observed-

> "Undoubtedly he has jurisdiction to make orders under Sections 7 and 7-A of the Act, if there be a vacancy. But whether there is a vacancy is a jurisdictional fact which cannot be

decided by him finally. By reaching an erroneous decision, he cannot clothe himself with jurisdiction which he does not possess. It is only when the order is with jurisdiction that the order is not liable to be challenged in a Civil Court by virtue to Section 16 of they Act".

A reading of this judgment shows that in view of the specific provisions of Sections 7 and 7-A of the Act their Lordships reached the conclusions that whether there is a vacancy is jurisdictional fact which could not be decided by the concerned officer finally.

29. We will now refer to the decision of this High Court. In *Venkata Ramanadham v. Venkatarathnam,*[6] , Seshachalapati, J., held that though a decision on the preliminary collateral facts or what may be called the jurisdictional facts by the inferior Tribunal or authority is not final and may be subjected to an appeal or revision, but that will not take away the right or perhaps the necessity for the inferior Tribunal to decide such collateral or jurisdictional fats. The learned Judge did not consider the question whether a decision on a collateral fact would bar the jurisdiction of the Civil Court as that matter was not before him.

30. In *Venkata Ramanadham v. Venkataratnam*[7] Satyanrayana Raju, J. considered the question whether the proceedings before the Tahsildar under the provisions of the Tenancy Act should be stayed till the disposal of the civil suit. While considering this question, the learned Judge held that the Tahsildar is entrusted with a special and exclusive jurisdiction with respect to the matters dealt in Section 16 (1) of the Act and the jurisdiction with respect to the matters dealt in Section 16 (1) of the Act and the jurisdiction of the Tahsildar to determine questions which are confined to him would prevail notwithstanding anything inconsistent therewith contained in any decree or order of a Civil Court. That being so, there is no question of the stay of proceedings pending before the Tahsildar till the disposal of the Civil suit. A reading of the judgment shows that it was not argued that the authority constituted under the Andhra Tenancy Act had no jurisdiction to entertain the application. The question for consideration was not whether the decision given by the Tahsildar in regard to the relationship of landlord and cultivating tenant is final and conclusive so as to debar the matter from being investigated by a Civil Court.

31. A Division Bench of this Court consisting of Seshachalapathi, J., and one of us in *Papinaidu v. Sivudu Naidu*[8], held that under Section 16 (1) of the Act all questions between the landlord and a cultivating tenant under the provisions of the Act have to be decided by the Tahsildar. One of such questions is certainly whether supplemental parties can be added whether supplemental parties can be added as provided under Order 1, Rule 10 (2) Civil Procedure Code. The question for consideration was whether an order directing the addition of supplemental parties is appealable under Section 16 of the Act and the learned Judges held that it was one of the questions which the Tahsildar has power to decide, an appeal can be laid under the provisions of

sub-section (2) of Section 16 of the Act. This case does not at all deal with the question as to whether the decision of the Tahsildar in regard to the relationship of the landlord and tenant is final and conclusive and cannot be questioned in a Civil Court.

32. A reading of the aforesaid decisions clearly show that whether a Tribunal has been given the exclusive jurisdiction to decide a particular circumstance depends upon the language of the Act and aims and objects for which the Act has been enacted. If a given Act postulates that on the existence of certain state of facts the Tribunal will have jurisdiction to decide the matters entrusted to it under the Act, the Tribunal will no doubt be competent to decide whether that stated of facts exists but the existence of such state of facts being a jurisdictional factor it cannot give to itself jurisdiction by a wrong decision as to the existence of such state of facts. Such a decision would be in regard to a collateral fact and can be questioned in a Civil Court and the jurisdiction f the Civil is not barred in such cases. Whereas in cases where the tribunal has been given exclusive jurisdiction to decide the existence of facts on the basis of which it could proceed to pass certain orders, the decision of those facts would also be final and conclusive and cannot be questioned in a Civil Court.

33. In the intent case, we have already shown that the jurisdiction of the Tahsildar rests upon the relationship of landlord and a cultivating tenant. He can actually in cases were where such relationship exists. No doubt in a given case he can determine if dispute arises with regard to such relationship but such a decision will only be a decision regarding a jurisdictional fat or a collateral fact and such a decision can always be questioned in a Civil Court. In the case before us, the question whether 1st respondent is a tenant of the whole of Ac. 30-0 of land is a question regarding a jurisdictional fact and any decision by the Tahsildar on that question will not be final and conclusive and can be agitated in and enquired into by a Civil Court. The appellant did file a suit in the Civil Court for arrears of rent on the ground that the 1st respondent though a tenant of Ac. 30-0 of land had not paid rent for the whole of the land taken on lease by him. The trial Court had on evidence led before it held that the 1st respondent was only the tenant of Ac. 10-0 of land and the rent in respect of Acres 10-0 at the stipulated rate was paid, the tenant had not committed any default, in payment of rent. The appeals to the District Court and the High Court proved unsuccessful. This finding being one of fact cannot be canvassed in the Letters Patent Appeal. We accordingly accept the finding of the lower Courts that the 1st respondent is a tenant of only Acres 10-0 of land and as such had not committed any default in payment of rent. It is also admitted that if the 1st respondent is held to be the tenant of only Acres 10-0 of lad, there is no question of his sub-letting the remaining 20 acres of land to respondents 2 to 6. It follows therefore that the 1st respondent did not sub-let the land as alleged by the appellant. Thus, the two grounds on which the appellant based his application for eviction viz., the default in payment of rent and sub-letting by the 1st respondent are not presented in the instant case and the

appellant's application for eviction has to fail.

34. We will now refer to the decision of a Bench of this Court in (1962) 1 Andh WR 10 which according to the learned Judges who referred the matter to Full Bench requires a closer scrutiny in the light of the Supreme Court decisions placed before them. The petitioners and the respondents before the High Court put forward competing titles to a holding in Panduri village in the Mallavaram Estate which was notified under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. The petitioners claimed to be the ryots in respects of the lands by virtue of being the tenants under the landlord, one Adepu Reddi Govaramma while the respondent claimed his occupancy rights to a lease obtained from another person of the same name . Govaramma. Both the parties approached the Settlement Officer for the issue of a ryotwari patta, each claiming to be the occupancy tenant in regard to the suit lands. When the matter was pending before the Settlement 13 of the Tenancy Act for evicting the petitioners from those lands on the allegation that the petitioners-lessees of the respondent had committed default in the payment of rent. The petitioners opposed the petition on the ground that the respondent had no manner of right to the property in question, that they had acquired both melwaram and kudiwaram rights in the lands and that it was not competent for the Tahsildar to inquire into questions of title relating to these lands. The Deputy Tahsildar negatived these contentions in the view that Section 13 of the Act enabled him to adjudicate on matters that have a bearing on the relief asked for.It is this opinion of there Deputy Tahsildar that was subjected to challenge before the learned Judges. The point considered by the learned Judges was whether the Tahsildar had jurisdiction to decide as to who has title to the lands in question, and it was held that in a petition for eviction the Tahsildar could not decide whether the respondent was really the landlord or whether the petitioners themselves had title to these lands by purchase from someone else. If the Judges by that decision intended to lay down that the Tahsildar could not decide a question of title for determining the existence or otherwise of relationship of landlord and tenant as a jurisdictional fact or as a collateral fact, this decision cannot be considered to be good law in view of the various decisions of the Supreme Court referred to by us earlier in this judgment. The Supreme Court in various decisions has laid down that a tribunal with a limited jurisdiction is competent to decide whether the state of facts on the existence of which the jurisdiction depends exists or does not exist. But such a decision is not conclusive and final and can always be agitated in a Civil Court. It therefore follows that the decision of the Division Bench so far as it lays down an absolute bar to the Tahsildar entering into the question of title in deciding the relationship of landlord and a cultivating tenant is no longer good law.

35. The last contention raised by the learned counsel for the appellant is that under Section 13 of the Act, the Tahsildar has jurisdiction to proceed against the sublessee. Before the we consider this contention, it is necessary to mention the preliminary point raised by the learned counsel for

the respondents 2 to 6 against the

entertainment

of this contention. His argument is that while allowing C. R. P. No. 239 of 1963 (2140 of 1963, D/- 28-4-1967?) Kumarayya, J., (as he then was) decided that a sub-lessee is not within the definition of cultivating tenant given in the Act and therefore the Tahsildar has no jurisdiction to decide any dispute that arises between the landlord and a sub-tenant. He further held that the principle that a decree obtained against a tenant is binding on the sub-tenant is not applicable to orders made by tribunals with limited jurisdiction. The landlord having allowed that decision to become final. the said questions cannot be agitated in the writ appeal filed by the landlord. In support of his argument, learned counsel for the respondents 2 to 6 relied upon the decision in Bandri Narayan v. Kamdeo Prasad, . In reply, the argument of the learned counsel for the appellant is that no doubt there was separate C. R. P. before the learned Judge but that C. R. P. arose out of a single proceeding, that proceeding being the application for eviction filed by the landlord under Section 13 of the Act, to which he not only made the tenant a party but also the sub-tenants. The Tahsildar ordered eviction against all of them to the Appellate Authority were also dismissed . The C. R. P. arose out of the appeal filled by the Sub-tenants before the Revenue Divisional Officer. Further, the C. R. P. and the Writ Petition were disposed of by a common judgment and therefore the contention that the decision in C. R. P. has become final so as to preclude the question decided by it being canvassed in the writ appeal cannot be accepted. Reliance is placed on Narhari v. Shanker, . It may be noted here that this decision has been distinguished in (supra).

36. Learned counsel for the appellant in support of his argument that the Tahsildar had jurisdiction to order eviction against the sub-tenant argued that (1) subletting has been made a ground for eviction under Section 13 (1) (c) of the Tenancy Act from which it follows that the Tahsildar can order eviction of the sub-tenant also; (2) the Civil Procedure Code has been made applicable to the Proceedings of the Tahsildar by virtue of Rule 14 (1) of the Rules made under the Tenancy Act. According to the provisions of the Civil Procedure Code, the sub-tenant though not a necessary party, is a proper party; (3) the Civil Procedure Code having been made applicable, the sub-tenant can be evicted in view of the provisions of Order 21, Rule 35, Civil Procedure Code even if he is not made a party to the eviction proceedings; and (4) under the general principles of law, the orders made against a tenant can be executed against a sub-tenant.

37. The argument of the learned counsel for the respondents is that under the provisions of Section 16 (1) of the Act all disputes arising between a landlord and a cultivating tenant only can be decided by the Tahsildar. The definition of cultivating tenant is not wide enough to include a sub-tenant and therefore any dispute which arose between the landlord and a sub-tenant is not

within the purview of Section 16 of the Tenancy Act and the Tahsildar has therefore no jurisdiction to order eviction of the sub-tenant. In regard to the application of Order 21, Rule 35, Civil Procedure Code the argument of the learned counsel for the respondent is that if that provision has to be applied the other provisions of the Civil Procedure Code that follow i.e., right of the person aggrieved to file a regular suit should also be applied, and that cannot be the intention in applying the Civil Procedure Code. He further contended that the general principle of law that an order against a tenant is binding on a sub-tenant does not apply to an order by a tribunal which has a limited jurisdiction to decide the disputes between the landlord and a cultivating tenant.

38. In view of our decision that the 1st respondent is a tenant only of Ac. 10-0 of land and that therefore there is no question of any sub-letting by the tenant, it is not necessary for us to decide whether the Tahsildar has jurisdiction to proceed against the sub-tenant and order his eviction. Nevertheless, we find that the contentions raised by the learned counsel are well founded. The sub-letting having been made a ground for eviction of the tenant, an order of eviction can be given effect to only if that order can be executed against the sub-tenant also. Otherwise, it would mean that a landlord will have to take two separate proceedings - one against the tenant for his eviction under the Act, and the other against the sub-tenant for eviction under the general law. That could not have been the intention of the legislature when it enacted that sub-letting is a ground for evicting the tenant. No doubt, the definition of cultivating tenant does not include a sub-tenant but that itself cannot oust the jurisdiction of the Tahsildar to order eviction of a sub-tenant. In our opinion, the very fact that when subletting has been made a ground for eviction it by necessary implication gives the power to the Tahsildar to order eviction of a subtenant also. Further by virtue of the application of the Civil Procedure Code, the sub-tenant though not a necessary party is a proper party vide M/s. I. & M. Ltd. v. Pheroze Framroze. . The Tahsildar has jurisdiction to decide whether the sub-tenant can be added as a party and the addition of supplementary party is a question which the Tahsildar has to decide under the provisions of Section 16 (1) of the Tenancy Act vide (1962) 2 Andh WR 180. The Supreme Court also held in that even though a sub-tenant is added, the suit is still a suit between a landlord and a tenant. The question of sub-tenancy has necessarily to be decided by the Tahsildar in the presence of the sub-tenant whose rights are likely to be affected. Further, under Order 21, Rule 35, Civil Procedure Code an order for delivery of possession can be executed by removing any person bound by the decree who refuses to vacate the property. The sub-tenant as he claims through the tenant is bound by the order of eviction passed against him and an be evicted under the provisions of this rule. It is argued by the learned counsel for the respondents that Order 21, is not applicable to the execution of an order of eviction made by the Tahsildar. He relied on Rule 13 of the rules which says that the order of the Tahsildar or the Revenue Divisional Officer under the Act shall be executed by an officer of the Revenue Department not lower in rank than a Revenue Inspector.

According to him, the Tahsildar is not the executing Court and Rule 14, applies Civil Procedure Code to the proceeding before the Tahsildar alone. We do not find any substance in this contention. Rule 13 merely lays down the person who will actually execute the order, but, that does not mean that the Tahsildar loses his power to decide question arising during the execution of the order. The proceedings in execution of the order before the Tahsildar are also governed by the provisions of Civil Procedure Code. Learned counsel for the respondents however contended that if Order 21, R. 35, Civil Procedure Code is made applicable, the other provisions of Civil Procedure Code which provide for a suit by an aggrieved party will also have to be made applicable. This argument overlooks the provisions in Rule 14 that the Civil Procedure Code is applicable as far as may be. It does not mean that all the provisions of the Civil Procedure Code can be applied if those provisions are not attracted by the proceedings before the Tahsildar. The landlord is also entitled to proceed against the sub-tenant who is bound by the decree under the provisions of general principles of law as he claims the property through the tenant. For the aforesaid reasons, we are of the opinion that the Tahsildar has jurisdiction to pass eviction order against a sub-tenant if he is a party to the proceedings, and even in cases where he is not made a party, he can be evicted under Procedure Code and also under general principles of law.

39. In the result, the writ appeal and the Letters Patent Appeal are dismissed. The appellant will pay the costs of the 1st respondent in the writ appeal. There will be no order as to costs in the Letters Patent Appeal. Advocate's fee Rs. 150/-.

40. Order accordingly.

Cases Referred.

11899 A. C. 99 at pp. 105-106
262 Mad LJ 720 = (AIR 1932 Mad 474)
3AIR 1946 Cal 217
4(1962) 1 Andh WR 416
5(1888) 21 QBD 313 at pp. 319-320
61959 Andh LT 114
7(1960) 1 Andh WR 123
8 (1962) 2 Andh WR 180