

Chinnamarkathian Alias Muthu Gounder and Another

Vs

Ayyavoo Alias Periana Gounder and Others

Chinna Gounder and Another

Vs

Ayyavoo Alias Periana Goun Der and Others

Raja Gounder and Another

Vs

Ayyavoo Alias Periana Gounder and Others

Civil Appeal No. 2197 of 1969

(D.A. Desai, A.D. Koshal, R.B. Misra JJ)

10.12.1981

JUDGMENT

DESAI, J. –

1. Respondents in each of these appeals are the landlords of the land more particularly described in the three different petitions filed by them in the Court of the Revenue Divisional Officer, Namakkal in Tamil Nadu State seeking to evict tenants of different parcels of land on the allegation that the concerned tenants were in arrears of rent for the years 1958-59, 1959-60 and 1960-61. The tenants who are appellants in these three appeals appeared in the respective petitions and contested the same on diverse grounds but the only one now surviving at this stage is; whether in view of the language employed in Section 3(4) (a) & (b) of the Madras (now Tamil Nadu) Cultivating Tenants Protection Act, 1955 (Act's for short.), the Revenue Divisional Officer erred in passing a composite order for payment of rent found to be in arrears within the time prescribed by him and on default, without any further proceeding, directing eviction of the tenants.

2. The respondents purchased the land cultivated by the tenants in each of the petitions under sale deeds Ex. P-6 dated January 22, 1960 and Ex. P-7 dated March 9, 1960, from the erstwhile owner of the land one Nachayammal. Subsequently by the deed of assignment Ex. P-5 dated December 5, 1960, Nachayammal, the vendor of the respondents assigned the rent in arrears for the period 1958-59 and 1959-60 to the respondents. By the time, action in each case was commenced, according to the respondents landlords rent for the year 1960-61 had become due and payable. The respondents accordingly filed C. T. P. As. Nos. 1,2, and 3 of 1961 against the respective tenants on January 2, 1961, for eviction of the tenants on the ground that they were in arrears of rent due and payable for the years 1958-59, 1959-60 and 1960-61.

3. The Revenue Divisional Officer overruled all the contentions of the appellants-tenants in each

case and held that the tenants were in arrears of rent for the aforementioned three years and that they were liable to pay the same. It was further held that since by the deed of assignment, previous landlord assigned the arrears of rent for two years 1958-59 and 1959-60 in favour of the respondents, they were not only entitled to commence the action for recovery of arrears of rent due and payable to the previous landlord but they were also entitled to evict the tenants for failure to pay rent in arrears. Having recorded these findings the Revenue Divisional Officer passed identical order in each case with variation in figures. Only one order may be extracted to focus the attention on the controversy not brought to this Court. In C. T. P. A. No. 1 of 1961 the following final order was made :

In view of my findings above I hold that the respondents are in areas of rent to the extent of Ass 2850 for the years 1958-59, 1959-60 and 1960-61 to the petitioners. I direct under Section 3(4) (a) that this amount be paid to the petitioners within six weeks from the date of this order failing which they shall be evicted from the suit lands.

This Order was made on November 6, 1961. The tenants were, therefore, under an obligation to pay the arrears found due by December 18, 1961, to qualify for the protection of the Act. Admittedly the tenants did not deposit the arrears found due by the Revenue Divisional Officer but filed three civil revision petitions on December 11, 1961 in the High Court. While admitting the revision petitions on December 15, 1961, the High Court granted conditional stay directing that the rent found in arrears be deposited within the time set out in the order of the High Court. A dispute appears to have been raised about the deposit made by the tenants whereupon the High Court on May, 2, 1962 directed that an additional amount of Rs. 950 be deposited by the tenants within the time prescribed by it and it is conceded that the conditional orders have been fully complied with.

4. The most important contention that engaged the attention of the High Court at the hearing of the revisions petitions was whether the Revenue Divisional Officer was in error in passing a composite order whereby he determined the amount of rent in arrears and after specifying the time within which the amount in arrears should be paid up, prescribed the consequences of failure to act within the prescribed time, namely, that the tenants would be evicted. The High Court noticed some of its own conflicting decisions bearing on the topic but ultimately held that the view taken by Srinivasan, J. in *Venkitaswam Naicker v. Ramaswami Naicker*, 77 LS 553 held as under, was correct :

Having regard to the object of the enactment it is clear that the law empowers the Revenue Divisional Officers to grant a reasonable time to the tenant to pay the arrears in order to avoid eviction. There may be a variety of circumstances by reasons of which the tenant might find it difficult to comply with the direction to deposit the arrears by the date fixed. If the date so fixed initially is to be an inflexible and unalterable date, it is bound to work considerable hardships upon the tenants. It would be a mechanical application of the provision of the section for the purpose of eviction. The object of the section is to avoid eviction wherever possible and not insist upon eviction for such reasons as obtained in the case.

5. Having noticed the law as indicated in the passage extracted, the High Court observed that the order made by the Revenue Divisional Officers was not one for eviction. A further unqualified order has to be passed by the Revenue Divisional Officer directing the eviction. But at a later stage in the judgment the High Court appears to have taken a somersault when it observed that in the case before it the High Court found nothing wrong in the order which the Revenue Divisional Officer

had passed. In other words, the composite order was held to be legal once the revision petitions filed by the tenants were dismissed by the High Court, the order passed by the Revenue Divisional Officer would immediately come into operation. With respect our task became none too easy to wade through the irreconcilably contradictory the three revision petitions. Hence these three appeal by certificate.

6. The object behind enacting the Act clearly manifests itself by reference to its long title which reads : "An Act for protection from eviction of cultivating tenants in certain areas in the State of Madras". It was a beneficent legislation for granting security of tenure to cultivating tenants of agricultural lands. It is a well-settled canon of construction that in construing the provisions of such enactments the court should adopt that construction which advances, fulfills and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory.

7. It is not in dispute that the tenants in each of these appeals are cultivating tenants and the lands of which they are tenants are land covered by the Act. They are sought to be evicted on the only ground that they have committed default in payment of rent payable from year to year for a period of three years.

8. Mr. Natesan learned counsel who appeared for the respondents urged that if the Revenue Divisional Officer has a discretion to grant time to the defaulting tenant to repair the default, there would be nothing illegal in granting time and simultaneously providing for consequence of default. This contention may be examined from three independent angles :

(1) Has Revenue Divisional Officer a discretion to grant time after being satisfied that a default is committed, to repair the default within the time considered reasonable by him and so ordered by him ? (2) Has he a discretion to further extend the time of the defaulting tenant is unable to repair the default within the time fixed by him ? (3) What is the impact of answer of the aforementioned two questions on his jurisdiction to pass a composite order ?

9. Section 3 and the relevant sub-sections read as under :

3. (1) Subject to the next succeeding sub-sections, no cultivating tenant shall be evicted from his holding or any part thereof, by or at the instance of his landlord, whether in execution of a decree or order of a court or otherwise.

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(4) (a) Every landlord seeking to evict a cultivating tenant falling under sub-section (2) shall, whether or not there is an order or decree of a court for the eviction of such cultivating tenant, make an application to the Revenue Divisional Officer and such application shall bear a court-fee stamp of one rupee.

(b) On receipt of such application, the Revenue Divisional Officer shall, after giving a reasonable opportunity to the landlord and the cultivating tenant to make their representations, hold a summary enquiry into the matter and pass an order either allowing the application or dismissing it and in a case falling under clause (a) or clause (aa) of sub-section (2) in which the tenant had not availed of the provisions contained in sub-section (3), the Revenue Divisional Officer may allow the cultivating tenant such time as he considers just and reasonable having regard to the

relative circumstances of the landlord and the cultivating tenant for depositing the arrears of rent payable under this Act inclusive of such costs as he may direct. If the cultivating tenant deposits the sum as directed, he shall be deemed to have paid the rent under sub-section (3) (b). If the cultivating tenant fails to deposit the sum as directed, the Revenue Divisional Officer shall pass an order for eviction.

10. Section 3 of the Act places an embargo on the eviction of a cultivating tenant and the protection extends to rendering a decree or order of a court for eviction nugatory. There is an enabling provision in sub-section (4) (a) of Section 3 which enables the landlord to seek eviction of a cultivating tenant on the ground which may be available to him under the Act. When such an application is made, clause (b) of sub-section (4) prescribes the procedure to be followed by the Revenue Divisional Officer. The officer concerned has to, (i) give an opportunity both to the landlord and the cultivating tenant to make a representation; (ii) hold a summary enquiry into the matter to determine the rent in arrears. After having determined the rent in arrears the Revenue Divisional Officer has to further enquire the relative circumstances of the landlord and the cultivating tenant and the circumstances which have a bearing on the issues are the circumstances relatable to the need of the landlord for rent and the present paying capacity of the tenant. After taking into consideration the circumstances of both the landlord and the tenant thus ascertained the Revenue Divisional Officer has to decide what length of time has to be given to the tenant to deposit the rent found in arrears and at that stage the proceedings must stop. It is something like a preliminary issue to be determined because after a finding is recorded that the tenant is in arrears and the amount of arrears is determined, the Revenue Divisional Officer is under a statutory obligation to grant time to deposit the arrears. The section grants *locus poenitentiae* to a tenant who has committed default in payment of rent. Granting of the time is not a concession dependent upon the sweet will of the Revenue Divisional Officer. Granting time to deposit the arrears is statutory obligation cast on the Revenue Divisional Officer. He has a discretion in determining the length of time and this discretion is to be exercised judicially based upon objective facts ascertained in the inquiry relatable to the circumstances of the landlord and the tenant. In the context in which the expression 'relative circumstances of the landlord and the cultivating tenant' is used clearly manifests the legislative intention that the circumstances of the landlord for recovering arrears of rent which may indicate his urgent need for the money or if the rent is in the crop share, the crop, and the relative circumstances of the tenant would be his present financial position to repair the default. On both sides there can be number of circumstances one can envisage which, if properly brought to the notice of the Revenue Divisional Officer, would influence his judicial decisions as to the length of time to be granted by him for the deposit of arrears. Where the landlord is a big landlord to which payment of rent by one tenant of a small amount would not make any difference and the tenant is a needy tenant who was so involved in such depressing circumstances that he could not pay even the small amount of rent in time and when such circumstances are judicially appraised, the Revenue Divisional Officer may shorten or lengthen the time to be given for depositing the amount so as to repair the default. It is not open to the Revenue Divisional Officer to arbitrarily fix time. His order fixing the time must show on the face of record that he made the necessary inquiry as to the relative circumstances of the landlord and the cultivating tenant, and after evaluating the circumstances placed before him by both the sides he would determine the length of time and the order fixing the time must at least give some indication as to what weighed with him in fixing the certain time which he fixed in a given case. The proceedings before the Revenue Divisional Officer are judicial proceedings. For the purpose of the proceedings under Section 3 of the Act, the Revenue Divisional Officer is a court as provided in Section 6-B of the Act and a revision petition would lie to the High Court against the order of the Revenue Divisional Officer.

11. If the proceedings are judicial and there is a lis between the parties, the rival contentions have to be properly adjudicated upon the evidence placed before the court. Before the Revenue Divisional Officer can make an order for eviction of a cultivating tenant he has, as a matter of statutory obligation, to determine the issues which arise in the case under sub-section (4) (b) of Section 3, record a finding on each of them and make a speaking order. By the very language of sub-section (4) (b) of Section 3, the Revenue Divisional Officer has to grant time to the cultivating tenant to deposit the arrears found due by him and the length of time is to be relatable to the circumstance of the landlord and the cultivating tenant. After determining the arrears and ascertaining the circumstances of landlord and tenant and fixing the length of time to pay the arrears, the proceeding at that stage must stop. This is implicit in sub-section (4) (b) of Section 3.

12. The scheme of the Act is that merely on determination of rent in arrears the Revenue Divisional Officer is not to conclude that there is such default which has become irreparable and that he is under an obligation to evict the tenant. In fact, the statute grants locus poenitentiae to the tenant by making it obligatory upon the Revenue Divisional Officer to grant some time to the tenant to repair the default. If after the time so granted expires and the tenant fails to comply with the order calling upon him to deposit the arrears there would be a default which may become irreparable and eviction may follow. Till then there is no jurisdiction in the Revenue Divisional Officer to direct eviction.

13. In fact the High Court itself has taken this every view when it observed that the view taken by Srinivasan, J. was the correct one having regard to the avowed object of the Act, namely, preventing unreasonable eviction and affording protection to the tenants to retain the holding so long as interests of the landlord in the matter of the prompt payment of rent are safeguarded. At another stage, the High Court observed that the time that has to be given or allowed to the tenant to deposit the arrears is to be determined by considering what is just and reasonable having regard to the relative circumstances of both the parties and by its very nature this must be elastic and flexible and not fixed or final. In other words, the High Court was of the opinion that the composite order is not contemplated by sub-section (4) (b) of Section 3.

14. If sub-section (4) (b) of Section 3 does not contemplate passing of a composite order, what is the correct procedure that must be followed in a proceedings under that sub-section? That is self-evident from the language employed in that sub-section. After the application is received and the parties are summoned and representations are heard, the court must determine whether the cultivating tenant is in arrears of rent. If the answer is in the affirmative, it has to determine the arrears in terms of its money value. Thereafter, the Revenue Divisional Officer must ascertain relative circumstances of the landlord and the tenant and as indicated hereinabove, these circumstances must be relatable to the need of the landlord for prompt payment and the present prevalent circumstances of the tenant relatable to his paying capacity. Thousand and one circumstances can be envisaged which may have a bearing on this aspect. After these circumstances are properly adjudicated and evaluated the Revenue Divisional Officer must fix time within which the tenant should pay the amount and repair the default.

15. It was seriously contended by Mr. Natesan as to what is there in the scheme of the Act and especially in the language of sub-section (4) (b) which would make it impermissible for the Revenue Divisional Officer simultaneously passing an order determining rent in arrears and directing that if the tenant fails to pay the amount within the time prescribed by the court eviction shall follow as a matter of course. If this construction of sub-section (4) (b) as canvassed by Mr. Natesan is adopted the Revenue Divisional Officer would be denying to himself a more beneficial jurisdiction conferred upon him, namely, to extent the time for making the payment if on evaluation

of circumstances so placed before him he is satisfied that a further extension is not only just but not to a grant it would be harsh and unjust and would be defeating the object for which the Act was enacted. An analogous provision may be noticed. It is a well accepted principle statutory recognised in Section 148 of the Code of Civil Procedure that where a period is fixed or granted by the court for doing any act prescribed or allowed by the Code, the court may in its discretion from time to time enlarge such period even though the period originally fixed or granted may expire. If a court in exercise of the jurisdiction can grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. Passing a composite order would be acting in disregard of the jurisdiction in that while granting time simultaneously the court denies to itself the jurisdiction to extend time. The principle of equity is that when some circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the court retains to itself the jurisdiction to re-examine the alteration or modification of circumstances which may necessitate extension of time. If the court by its own act denies itself the jurisdiction to do so, it would be denying to itself the jurisdiction which in the absence of a negative provision, it undoubtedly enjoys. Conditional orders, were held by this Court to be in *terrorem*, so that dilatory litigants might put themselves in order and avoid delay, but they do not completely estop a court from taking note of events and circumstances which happen within the time fixed. In *Mahanth Ram Das v. Ganga Das*, (1961) 3 SCR 763 : AIR 1961 SC 882 : (1962) 1 SCJ 427, in the context of a failure to pay requisite court fee within the time allowed by the court subject to the conditional order that failure to pay would result in dismissal of the appeal, this Court observed as under :

How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out, often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in *terrorem*, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves on the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians.

The danger inherent in passing conditional orders becomes self-evident because that by itself may result in taking away jurisdiction conferred on the court for just decision of the case. The true purport of conditional order is that such orders merely create something like a guarantee or sanction for obedience of the court's order but would not take away the court's jurisdiction to act according to the mandate of the statute or on relevant equitable considerations if the statute does not deny such consideration. In order to avoid subsequent controversy sub-section (4) (b) envisages proceedings in two stages and that by itself inhibits passing of a conditional order. It is, therefore, not possible to accept the construction canvassed for on behalf of the respondents.

16. As analysed the scheme of sub-section (4) (b) of Section 3 requires the Revenue Divisional Officer to determine arrears, ascertain the exact amount payable by the tenant, fix the time for payment after taking into consideration the relevant circumstances of the landlord and the cultivating tenant and then stop there. There is no power in the Revenue Divisional Officer at that stage to pass an order for eviction.

17. If the tenant deposits the amount or pays up the rent and repairs the default within the time fixed by the Revenue Divisional Officer, on an application of the tenant pointing out this fact, the original application of the landlord for eviction would have to be dismissed. If on the other hand the landlord points out to the Revenue Divisional Officer that the cultivating tenant has failed to comply with the order made by the court and if after notice to the tenant and in the absence of a request for extension of time which again may be judicially examined, the default becomes willful or contumacious, it is at that stage and at that stage alone that the Revenue Divisional Officer enjoys jurisdiction to order eviction. Such jurisdiction improperly exercised at an earlier stage would render the order without jurisdiction. Surprisingly the High Court reached the same conclusion but failed to follow it.

18. In all the three cases the Revenue Divisional Officer determined the arrears of rent and gave six weeks' time to pay the same. Within the period of six weeks the cultivating tenants in each case approached the High Court and obtained conditional stay, the condition being to deposit the rent in arrears within the time prescribed by the High Court and these orders have been complied with. If the Revenue Divisional Officer had not denied to himself the further jurisdiction to examine the situation as it emerged on the date of expiry of the period prescribed by him, it would have been brought to his notice that the eviction was unjustified in view of the orders made by the High Court. But as the order became effective according to the Revenue Divisional Officer on the mere failure to deposit the arrears found due by him, the order of eviction without jurisdiction became effective. The High Court held that there was no order of eviction but affirmed the order of the Revenue Divisional Officer as one for eviction.

19. The question then is : What should be my approach in these appeals ? Frankly speaking, on my finding that the later part of the Revenue Divisional Officer's order that "in the event of failure to deposit the amount within the time prescribed eviction would follow", being without jurisdiction, I would be required to remand the matter to the Revenue Divisional Officer to proceed from that stage. However, I cannot overlook the fact that the initial proceedings before the Revenue Divisional Officer started in 1961. Two decades have rolled by. The ground of eviction was a technical ground of default repaired by the orders of the High Court when the rent found in arrears was deposited. The landlords have been paid, may be not specifically within the time prescribed by the Revenue Divisional Officer but within the time prescribed by the High Court. It is not necessary to decide in this case whether the time prescribed by the Revenue Divisional Officer, if challenged in the superior court i.e. the High Court, the High Court would have jurisdiction to prescribe its own time calling upon the tenant to deposit the amount to repair the default. That question be kept open but in the facts of this case the amount having been deposited way back in 1961-62, it would be merely adding to the agony of the parties for a very technical consideration to remit the case to the Revenue Divisional Officer. In the facts of this case it would be an idle formality to remit the case to the Revenue Divisional Officer for the additional reason that he will have to fix a fresh date for deposit of the amount and the amount has already been deposited 19 to 20 years back. Having regard to all the circumstances of the case and the inevitable consequence flowing from the passage of time, I do not consider it just and proper to remit the case to the Revenue Divisional Officer. In my opinion the tenants have qualified for the protection of the Act and they were not liable to be evicted.

20. Accordingly, all the three appeals are allowed and the order for eviction of the tenants in each case is set aside but in the circumstances of the case with no order as to costs.

KOSHAL, J :-

I have had the advantage of going through the judgment prepared by my learned brother, Desai J., and find myself in agreement with him on following points :

(a) When the Revenue Divisional Officer ('R. D. O.' for short) allows time to a cultivating tenant for depositing the arrears of rent in pursuance of the provisions of clause (b) of the sub-section (4) of Section 3 of the Act, he cannot simultaneously pass a conditional order of eviction which is to take effect on a default to occur in future. An order of that type can, in terms of the section, only be passed 'if the cultivating tenant fails to deposit the sum as directed. The orders of the R. D. O. directing eviction and covered by these appeals were thus passed in contravention of the express provisions of the clause and are thus without jurisdiction.

(b) The orders of the R. D. O. directing the deposit of rent having been actually complied with about a couple of decades back it is no use remitting the case to him and it would serve the ends of justice, if we declare that the tenants are qualified for the protection envisaged by the Act against their eviction.

(c) All the three appeals merit acceptance and are allowed with no orders as to costs, the order for eviction of the tenant in each case being set aside.

22. I may, however, observe that it is wholly unnecessary for the decision of the appeals to determine the question as to whether it is incumbent on the R. D. O., while acting in pursuance of the provisions of clause (b) above mentioned, to grant time to a tenant who has been found by him to be in arrears of rent. For one thing, that question did not form the subject-matter of argument on either side at the hearing of the appeals, the only point really canvassed before us being that when the R. D. O. grants time to the tenant he cannot simultaneously pass an order of eviction which is to take effect in future and which he can pass only after the default in making the deposit is committed. Secondly, that question does not arise in these appeals as in each of the appeals before us the R. D. O. did grant time to the tenants concerned to deposit arrears of rent. As it is, Desai, J., has arrived at a categorical conclusion that according to clause (b) aforesaid it is obligatory on the R. D. O. to grant time to the tenant for depositing the arrears in all cases falling under clauses (a) or clause (aa) of sub-section (2) of Section 3 of the Act in which the tenant has not availed of the provisions contained in sub-section (3) of that section. Being unable to subscribe to that conclusion I give below my reasons for holding a contrary opinion.

23. The relevant portion of Section 3 is set out hereunder :

3. (1) Subject to the next succeeding sub-sections, no cultivating tenant shall be evicted from his holding or any part thereof, by or at the instance of his landlord, whether in execution of a decree or order of a Court or otherwise.

(2) Subject to the next succeeding sub-section, sub-section (1) shall not apply to a cultivating tenant -

(aa) who, in the areas where... if in arrears at the commencement of this Act, with respect to the rent payable to the landlord does not pay such rent within six weeks after such commencement or who in respect of rent payable to the landlord after the commencement of this Act, does not pay such rent within a month after such rent becomes due; or (aa) who, in the other areas of the State of Madras, if in arrears at

the commencement of this Act, with respect to the rent payable to the landlord and accrued due subsequent to March 31, 1954 does not pay such rent within a month after such commencement, or who in respect of rent payable to the landlord after such commencement, does not pay such rent within a month after such rent becomes due; or

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(3) (a) A cultivating tenant may deposit in Court the rent or, if the rent be payable in kind, its market value on the date of deposit, to the account of the landlord -

(i) in the case of rent accrued due subsequent to March 31, 1954, within a month after the commencement of this Act; (ii) in the case of accrued due after the commencement of this Act, within a month after the date on which the rent accrued due.

(b) The Court shall cause notice of the deposit to be issued to the landlord and determine, after a summary enquiry, whether the amount deposited represents the correct amount of rent due from the cultivating tenant. If the Court finds that any further sum is due, it shall allow the cultivating tenant such time as it consider just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing such further sum inclusive of such costs as the Court may allow. If the Court adjudges that no further sum is due, or if the cultivating tenant deposits within the time allowed such further sum as is ordered by the Court, the cultivating tenant shall be deemed to have paid the rent within the period specified in the last foregoing sub-section. If, having to deposit a further sum, the cultivating tenant fails to do so within the time allowed by the Court, the landlord may evict the cultivating tenant as provided in sub-section (4).

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(4) (a) Every landlord seeking to evict a cultivating tenant falling under sub-section (2) shall, whether or not there is an order or decree of a court of the eviction of such cultivating tenant, make an application to the Revenue Divisional Officer and such applications shall bear a court-fee stamp of one rupee.

(b) On receipt of such application, the Revenue Divisional Officer shall, after giving a reasonable opportunity to the landlord and the cultivating tenant to make their representations, hold a summary enquiry into the matter and pass in order either allowing the application or dismissing it and in a case falling under clause (a) or clause (aa) of sub-section (2) in which the tenant had not availed of the provisions contained in sub-section (3), the Revenue Divisional Officer may allow the cultivating tenant such time as he considers just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing the arrears of rent payable under this Act inclusive of such costs as he may direct. If the cultivating tenant deposits the sum as directed, he shall be deemed to have paid the rent under sub-section (3) (b). If the cultivating tenant fails to deposit the sum as directed, the Revenue Divisional Officer shall pass an order for eviction.

24. An analysis of the section clearly leads to certain indisputable propositions. Sub-section (1) creates a bar against the eviction of a cultivating tenant from his holding or any part thereof, by or at the instance of his landlord, even though the latter seeks to do so in execution of a decree or order of a court. This bar is subject only to the provisions of sub-section (2), (3) and (4). Sub-section (2) enacts an exception to sub-section (1) and lays down inter alia that sub-section (1) shall not apply to a cultivating tenant who conforms to the description in clause (a) or (aa) of sub-section (2). Both the clauses last mentioned cover tenants who are in arrears in regard to the payment of rent at the commencement of the Act or who fail to pay rent falling due after such commencement within a month after its becoming due. Sub-section (3) enables a cultivating tenant to deposit arrears of rent in court and further provides that after notice of such deposit has been given to the landlord, the court would embark on a summary inquiry and then adjudge whether any further sum is due to the landlord. If the court finds that a further sum is due, "it shall allow the cultivating tenant such time as it may consider just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing such further sum inclusive of such costs as the court may allow". If the cultivating tenant fails to pay the sum determined by the court to be due under sub-section (3) the landlord "may evict the cultivating tenant as provided in sub-section (4)". Sub-section (4) then states that a landlord seeking to evict a cultivating tenant falling under sub-section (2) shall make an application to the R. D. O. who shall after giving a reasonable opportunity to the landlord and the cultivating tenant to make their representations, hold a summary enquiry into the matter and pass an order either allowing the application or dismissing it. The sub-section further provides that if the case falls under clause (a) or (aa) of sub-section (2) in which the tenant had not availed of the provisions contained in sub-section (3), the R. D. O. may allow the cultivating tenant such time as he considers just and reasonable having regard....

25. Now as I read sub-section (4), it gives the R. D. O. power either to allow the application of the landlord or to dismiss it after he has held a summary enquiry into the matter. If the application is allowed an order of eviction has to be passed. If it is dismissed the proceedings again come to an end. However, if the ground of eviction is non-payment of rent, the R. D. O. is clothed with power to allow the cultivating tenant to deposit the arrears and costs as directed. The power is discretionary and, while exercising the same, it is not incumbent on R. D. O. to grant time. If the legislature intended to make it obligatory on the part of the R. D. O. to fix a time for deposit of the arrears in all cases covered by clauses (a) or clause (aa) of sub-section (2) there is no reason why it should have the word "may" in relation to the grant of time. Support for this view is available in clause (b) of sub-section (3) wherein, the legislature has directed :

If the Court finds that any sum is due it shall allow the cultivating tenant such time as it may consider just and reasonable.....

In the situation it must be held that while the opportunity of depositing the arrears of rent cannot be denied to a cultivating tenant during the course of proceedings under sub-section (3), the same is not available as of right under clause (b) of sub-section (4). The difference in the language used by the legislature is significant and not without purpose. The intention of the legislature appears to be that normally a defaulting tenant must seek the help of the court all by himself and that if he does so he must be protected; but that a defaulting tenant who waits for payment of rent till he is sought to be evicted by the landlord is not necessarily entitled to the same protection. Circumstances may exist which may place him at par with a tenant covered by sub-section (3) but then it may not necessarily be so. That is why it is left to the discretion of the R. D. O. to grant time to the cultivating tenants or to deny him that opportunity. An example of a case in which no time should be allowed would be that of a tenant who, although in affluent circumstances at all relevant point of time, has failed to

make payment of rent years after year in spite of repeated demands from an otherwise indigent landlord and whose conduct is, therefore, contumacious calling for no sympathy or concession. The extension to him of the same facility which is afforded to a willing tenant under sub-section (3) would be uncalled for and in fact unjust.

26. Nor do I find why the word "may" occurring in clause (b) of sub-section (4) be not given its ordinary meaning as denoting the conferment of a discretion on the R. D. O. and be equated with "shall" so as to make it obligatory on him to grant time to the cultivating tenant.

27. Subject to the disagreement expressed by me above I concur with the judgment of Desai, J.

MISRA, J :-

I agree with my learned brother, Koshal, J.

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