MADRAS ORDINANCES

1966

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THE MADRAS ESSENTIAL ARTICLES CONTROL AND REQUISITIONING (TEMPORARY POWERS) AMENDMENT ORDINANCE, 1966.

[*Published in the Fort St. George Gazette* (Extraordinary) *Part IV, section* 4, *page* 9, *dated the* 20*th January,* 1966.]

ORDINANCE NO. I OF 1966.

An Ordinance further to amend the Madras Essential Articles Control and Requisitioning (Temporary Powers) Act, 1949.

WHEREAS the Legislature of the State is not in session and the Governor of Madras is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose hereinafter appearing ;

AND WHEREAS the instructions of the President have been obtained in pursuance of the proviso to clause (1) of Article 213 of the Constitution ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution, the Governor hereby promulgated the following Ordinance :—

Short title.

1. This Ordinance may be called THE MADRAS ESSENTIAL ARTICLES CONTROL AND REQUISITIONING (TEMPORARY POWERS) AMENDMENT ORDINANCE, 1966.

Amendment of section 1, Madras Act XXIX of 1949.

2. In sub-section (3) of section 1 of the Madras Essential Articles Control and Requisitioning (Temporary Powers) Act, 1949 (Madras Act XXIX of 1949), for the words, figures and letters " the 25th January, 1966 " the words, figures and letters " the 25th January, 1967 " shall be substituted.

EXPLANATORY STATEMENT.

The orders relating to the supply of electrical energy and the levy of charges for the supply of electrical energy in this State are enforced under the provisions of the Madras Essential Articles Control and Requisitioning (Temporary Powers) Act, 1949 (Madras Act XXIX of 1949). The life of that Act has been extended from time to time and it is due to expire on the 25th January, 1966. It is considered necessary to extend the life of the Act for a further period of one year, that is, up to and inclusive of the 25th January, 1967.

The Ordinance seeks to achieve the above object.

THE MADRAS CULTIVATING TENANTS (PROTECTION FROM EVICTION) ORDINANCE, 1966.

[*Published in the Fort St. George Gazette* (Extraordinary), *Part IV, section* 4, *page* 73 *dated the* 20*th April,* 1966.]

ORDINANCE NO. II OF 1966.

An Ordinance to provide for the protection from eviction of cultivating tenants who are in arrears with respect to the rent payable to the landlords.

WHEREAS since last year there has been an unprecedented drought and the cultivating tenants are unable to pay arrears of rent to the landlords ;

AND WHEREAS it is in the interest of the general public that at the present time cultivating tenants be spared the distractions and expenditure involved in eviction proceedings launched by the landlords, in order that the maximum possible advantage may result to the State in the matter of production of food crops ;

AND WHEREAS the Legislature of the State is not in session and the Governor of Madras is satisfied that circumstances exist which render it necessary for him to take immediate action for the purposes hereinafter appearing ;

AND WHEREAS the instructions of the President have been obtained in pursuance of the proviso to clause (1) of Article 213 of the Constitution ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution, the Governor hereby promulgates the following Ordinance :

Short title and extent.

1. (1) This Ordinance may be called THE MADRAS CULTIVATING TENANTS (PROTECTION FROM EVICTION) ORDINANCE, 1966.

(2) It extends to the whole of the State of Madras other than the Kanyakumari district and the areas to which the Malabar Tenancy Act, 1929 (Madras Act XIV of 1930), extends.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(1) " Tenants Protection Act " means the Madras Cultivating Tenants Protection Act 1955 (Madras Act XXV of 1955) ;

(2) all other words and expressions used, but not defined, in this Ordinance and defined in the Madras Cultivating Tenants Protection Act, 1955 (Madras Act XXV of 1955) shall have the meanings respectively assigned to them in that Act.

Cultivating tenant not to be evicted on the ground that he is in arrears.

3. During the continuance of this Ordinance—

(i) no application under the Tenants Protection Act shall be made by a landlord for the eviction of a cultivating tenant from his holding or any part thereof on the ground that the cultivating tenant is in arrear with respect to the rent payable to the landlord,

(ii) 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 on the ground that the cultivating tenant is in arrear with respect the rent payable to the landlord.

Stay of applications and suits for eviction of a cultivating tenant.

4. (*a*) All applications under the Tenants Protection Act for the eviction of a cultivating tenant, and

(*b*) all suits, proceeding in execution of decrees or orders and other proceedings for the eviction of a cultivating tenant,

on the ground that he is in arrear with respect to the rent payable to the landlord and pending before a Revenue Divisional Officer, Court or other authority, as the case may be, shall stand stayed.

Exclusion of time for limitation.

5. In computing the period of limitation or limit of time prescribed for an application for the eviction of a cultivating tenant or for the execution of a decree or order for such eviction, the time during which he was protected by sections 3 and 4 from eviction shall be excluded.

Explanation.—A decree or order shall be deemed to be a decree or order for the eviction of a cultivating tenant, notwithstanding that any other relief is also granted by such decree or order.

Continuance of applications and suits and proceedings after the expiration of the Ordinance.

6. All applications for the eviction of a cultivating tenant under the Tenants Protection Act and all suits and proceedings, stayed under this Ordinance shall, after the expiration of this Ordinance, be proceeded with subject to the provisions of any law which may then be in force, from the stage which had been reached when the application, suit or proceeding was stayed.

Power to remove difficulties.

7. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the State Government may, as occasion may require, by order do anything which appears to them necessary for the purpose of removing the difficulty.

(2) All orders made under this section shall be published in the *Fort St. George Gazette* and, unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(3) Every order made under this section shall, as soon as possible after it is made, be placed on the table of both Houses of the Legislature, and if, before the expiry of the session in which it is so placed or the next session, both Houses agree in making any modification in any such order or both Houses agree that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order.

EXPLANATORY STATEMENT.

There has been an unprecedented drought since last year and the cultivating tenants have not been able to pay the rents to their landlords. Under the provision of the Madras Cultivating Tenants Protection Act, 1955 (Madras Act XXV of 1955), the landlords could evict the cultivating tenants who are in arrears. In the interest of food production, cultivating tenants should be spared the distractions and expenditure involved in eviction proceedings launched by the landlords. The Government consider that immediate steps should be taken to bar and stay eviction proceedings against cultivating tenants who are in arrears with respect to the rent payable to the landlords.

The Ordinance seeks to give effect to the above proposal.

THE MADRAS URBAN LAND TAX ORDINANCE, 1966.

[*Published in the Fort St. George Gazette* (Extraordinary), *Part IV, section* 4, *page* 85, *dated the* 21*st May*, 1966].

ORDINANCE NO. III OF 1966.

An Ordinance to provide for the levy of tax on urban land in the State of Madras.

WHEREAS the Legislature of the State is not in session and the Governor of Madras is satisfied that circumstances exist which render it necessary for him to take immediate action for the purposes hereinafter appearing ;

AND WHEREAS the instructions of the President have been obtained in pursuance of the proviso to clause (1) of Article 213 of the Constitution ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution, the Governor hereby promulgates the following Ordinance :—

CHAPTER I.

PRELIMINARY.

Short title and commencement.

1. (1) This Ordinance may be called THE MADRAS URBAN LAND TAX ORDINANCE, 1966.

(2) (*a*) This Ordinance, except sections 18 and 46 shall be deemed to have come into force in the City of Madras on the 1st day of July, 1963 and sections 18 and 46 shall come into force in the City of Madras on the date of the publication of this Ordinance.

(*b*) The Government may, by notification, direct that this Ordinance shall come into force on such date as may be specified in the notification in—

(i) any other municipal town ; or

(ii) any township ; or

(iii) any area specified in the notification and within sixteen kilometres of the City of Madras or such municipal town or township.

(3) The Government may, by notification, cancel any notification issued under clause (*b*) of sub-section (2), but the cancellation shall not be deemed to affect the power of the Government under clause (*b*) of sub-section (2) again to bring this Ordinance into force in such municipal town or township or area.

(4) A draft of any notification proposed to be issued under clause (*b*) of sub-section (2) or sub-section (3) shall be laid on the table of the Legislative Assembly and the notification shall not be issued unless the Assembly approves the draft either without modification or addition or with modifications or additions ; and upon such approval being given the notification shall be issued in the form in which it has been approved and such notification on being so issued shall be published in the *Fort St. George Gazette*, and shall thereafter be of full force and effect.

Definitions.

2. In this Ordinance, unless the context otherwise requires—

(1) " assessee " means a person by whom urban land tax is payable under this Ordinance and includes every other person in respect of whom any proceeding under this Ordinance has been taken for the determination of the urban land tax payable by him ;

(2) " Assistant Commissioner" means the Assistant Commissioner of Urban Land Tax appointed under section 3 ;

(3) " building " includes a house, out-house, stable, latrine, godown, shed, hut, wall and any other structure, whether of masonry, bricks, mud, wood, metal or any other material whatsoever ;

(4) " Commissioner " means the Commissioner of Urban Land Tax appointed under section 3 ;

(5) " date of the commencement of this Ordinance" means—

(i) in relation to the City of Madras, the first day of July, 1963 ; and

(ii) in relation to any other municipal town or township or area, the first day of July of the fasli year in which the notification under clause (*b*) of sub-section (2) of section 1 is published;

(6) " date of the publication of this Ordinance " means the date on which this Ordinance is published in the *Fort St. George Gazette* ;

(7) " fasli year " means the year commencing on the first day of July ;

(8) " Government " means the State Government ;

(9) " occupier " includes—

(*a*) any person for the time being paying or liable to pay to the owner rent or any portion of the rent of the urban land or of the building constructed on the urban land or part of such land or building in respect of which the word is used or the damages on account of the occupation of such land, building or part ; and

(*b*) a rent-free occupant ;

but does not include any person who is entitled to the kudiwaram in respect of any inam land but in respect of which land any other person is entitled to the melwaram ;

(10) " owner " includes—

(i) any person (including a mortgagee in possession) for the time being receiving or entitled to receive, whether on his own account or as agent, trustee, guardian, manager or receiver for another person or for any religious or charitable purposes, the rent or profits of the urban land or of the building constructed on the urban land in respect of which the word is used ;

(ii) any person who is entitled to the kudiwaram in respect of any inam land ;

but does not include—

(*a*) a *shrotriemdar*; or

(*b*) any person who is entitled to the melwaram in respect of any inam land but in respect of which land any other person is entitled to the kudiwaram.

Explanation.—For the purposes of clause (9) and clause (10), inam land includes *lakhiraj* tenures of land and *shrotriem* land.

(11) " township " means a township constituted under the Mettur Township Act, 1940 (Madras Act XI of 1940), the Courtallam Township Act, 1954 (Madras Act XVI of 1954), the Bhavanisagar Township Act, 1954 (Madras Act XXV of 1954), or section 4 of the Madras Panchayats Act, 1958 (Madras Act XXXV of 1958) or any other township constituted under any other law for the time being in force ;

(12) " Tribunal " means a Tribunal constituted under section 4 ;

(13) " urban land " means any land which is used or is capable of being used as a building-site and includes garden, grounds, if any, appurtenant to a building but does not include any land which is registered as wet in the revenue accounts of the Government and used for the cultivation of wet crops.

Explanation.—For the purposes of this clause, any site on which any building has been constructed shall be deemed to be urban land ;

(14) " Urban Land Tax Officer " means the Urban Land Tax Officer appointed under section 3.

CHAPTER II.

URBAN LAND TAX AUTHORITIES.

Urban land tax authorities.

3. (1) There shall be the following classes of urban land tax authorities for the purposes of this Ordinance, namely :—

(*a*) the Board of Revenue ;

(*b*) Commissioner of Urban Land Tax ;

(*c*) Assistant Commissioners of Urban Land Tax ;

(*d*) Urban Land Tax Officers.

(2) (*a*) The authorities specified in clauses (*b*) to (*d*) of sub-section (1) shall be appointed by the Government, by notification, with jurisdiction over such area as may be specified in such notification.

(*b*) The authorities specified in sub-section (1) shall exercise, discharge and perform such powers, duties and functions as are assigned to them by or under this Ordinance.

(3) The Government may, by notification, empower any officers [other than the authorities specified in sub-section (1)] including officers of any local authority to exercise such powers, discharge such duties and perform such functions under this Ordinance in respect of such classes of persons or classes of urban land and in such areas, as may be specified in the notification.

(4) The authorities specified in sub-section (1) and the officers specified in sub-section (3) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

(5) All officers and persons employed in the execution of this Ordinance shall observe and follow the orders, instructions and directions of the Board of Revenue.

Constitution of Tribunals.

4. (1) The Government shall constitute as many Tribunals as may be necessary for the purposes of this Ordinance.

(2) Each Tribunal shall consist of one person only who shall be a Judicial Officer not below the rank of Subordinate Judge.

(3) Each Tribunal shall have such jurisdiction as the Government may, by notification from time to time, determine.

CHAPTER III.

Determination of Market Value and Assessment of Urban Land Tax.

Levy of urban land tax.

5. Subject to the other provisions contained in this Ordinance, there shall be levied and collected for every fasli year commencing from the date of the commencement of this Ordinance, a tax on each urban land (hereinafter referred to as the urban land tax) from the owner of such urban land at the rate of 0.4 per centum of the market value of such urban land.

Explanation.—In this Ordinance, the expression "each urban land" means the land comprised in a sub-division.

Market value of urban land.

6. The market value of any urban land shall be estimated to be the price which in the opinion of the Assistant Commissioner or the Tribunal, as the case may be, such urban land would have fetched or fetch, if sold in the open market on the date of the commencement of this Ordinance.

Owner of urban land liable to submit return.

7. Every owner of urban land liable to pay urban land tax under this Ordinance shall, within a period of one month from the date of the publication of this Ordinance, furnish to the Assistant Commissioner having jurisdiction a return in respect of each urban land containing the following particulars, namely :—

(*a*) name of the owner of the urban land,

(*b*) the extent of the urban land,

(*c*) the name of the division or ward and of the street, survey number and sub-division number of the urban land and other particulars of such urban land, and

(*d*) the amount which in the opinion of the owner is the market value of the urban land.

Return by whom to be signed.

8. The return made under section 7 shall be signed and verified—

(*a*) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf.

(*b*) in the case of a Hindu undivided family, by the Manager, and, where the Manager is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family ;

(*c*) in the case of a company, by the principal officer thereof ;

(*d*) in the case of a firm, by any partner thereof, not being a minor ;

(*e*) in the case of any other association, by any member of the association or the principal officer thereof ; and

(*f*) in the case of any other person, by that person or by some person competent to act on his behalf ;

Collection of information.

9. If any owner of urban land fails to furnish the return under section 7, the Assistant Commissioner may obtain the necessary information in respect of the particulars specified in section 7, either by himself or through such agency as he thinks fit.

Determination of market value by Assistant Commissioner.

10. (1) Where a return is furnished under section 7, the Assistant Commissioner shall examine the return and make such enquiry as he deems fit. If the Assistant Commissioner is satisfied that the particulars mentioned therein are correct and complete, he shall, by order in writing, determine the market value of the urban land and the amount of urban land tax payable in respect of such urban land.

(2) (*a*) Where on examination of the return and after the enquiry, the Assistant Commissioner is not satisfied that the particulars mentioned therein are correct and complete, he shall serve a notice on the owner either to attend in person at his office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the owner may rely in support of his return.

(*b*) The Assistant Commissioner, after hearing such evidence as the owne may produce in pursuance of the notice under clause (*a*) and such other evidence as the Assistant Commissioner may require on any specified points, shall, by order in writing, determine the market value of the urban land and the amount of urban land tax payable in respect of such urban land.

(*c*) Where the owner has failed to attend or produce evidence in pursuance of the notice under clause (*a*), the Assistant Commissioner shall, on the basis of the inquiry made under clause (*a*), by order in writing, determine the market value of the urban land and the amount of urban land tax payable in respect of such urban land.

Procedure in case where no return is filed.

11. (1) Where the owner of urban land has failed to furnish the return under section 7, and the Assistant Commissioner has obtained the necessary information under section 9, he shall serve a notice on the .owner in respect of each urban land specifying therein—

(*a*) the extent of the urban land,

(*b*) the amount which, in the opinion of the Assistant Commissioner, is the correct market value of the urban land, and direct him either to attend in person at his office on a date to be specified in the notice or to prodcue for cause to be produced on that date any evidence on which the owner may rely.

(2) After hearing such evidence as the owner may produce and such other evidence as the Assistant Commissioner may require on any specified points, the Assistant Commissioner shall, by order in writing, determine the market value of the urban land and the amount of urban land tax payable by such owner.

(3) Where the owner has failed to attend or to produce evidence in pursuance of the notice under sub-section (1), the Assistant Commissioner shall, on the basis of the information obtained by him under section 9, by order in writing, determine the market value of the urban land and the amount of the urban land tax payable in respect of such urban land.

Copy of order to be sent to the assessee and Commissioner.

12. A copy of the order passed under section 10 or 11 shall be served on the owner in such manner as may be prescribed and a copy of the said order shall also be sent to the Commissioner.

Notice of demend.

13. (1) After the determination of the market value and of the amount of the urban land tax under section 10 or 11, the Urban Land Tax Officer shall cause a notice of demand to

be served on the assessee in the prescribed manner. Such notice shall specify the amount of the urban land tax payable by the assessee and shall contain such other particulars as may be prescribed.

(2) The notice referred to in sub-section (1) shall call upon the assessee to pay within a period of fifteen days from the date of service of the notice the urban land tax specified in the notice.

(3) Where the urban land tax payable by the assessee is not paid before the expiry of the period specified in the notice, the urban land tax shall be recovered from the assessee as arears of land revenue.

Separate notice of demand for each fasli year.

14. In respect of the urban land tax payable for every fasli year or part thereof, there shall be a separate notice of demand, containing the particulars mentioned in section 13, and it shall be served on the assessee in the prescribed manner.

Urban land tax escaping assessment.

15. If the Assistant Commissioner has reason to believe that for any reason any urban land has escaped assessment or has been wrongly or incorrectly assessed for any fasli year, he may, within such period and after following such procedure as may be prescribed, proceed to assess or re-assess such urban land and the provisions of this Ordinance shall, as far as may be, apply to such assessment or re-assessment.

Urban land tax to be first charge on urban land.

16. The urban land tax shall, notwithstanding anything contained in any other law for the time being in force, or any custom, usage or contract or decree or order of a court or other authority, be a first charge upon the urban land and upon the immovable property, on such urban land and belonging to the person liable to pay such tax.

Recovery from occupier of urban land in certain cases.

17. (1) Where the owner of any urban land is himself not the occupier thereof and is in default of payment of the urban land tax, such tax may be recovered from the occupier of such urban land in the manner prescribed.

(2) (*a*) Any occupier who has paid the urban land tax under sub-section (1) shall be entitled to deduct the amount so paid from the amount of rent or any other sum due from time to time to the owner or intermediary, if any.

(*b*) The intermediary shall be entitled to deduct such amount from the amount of rent or other sum due from time to time to the owner.

Explanation.—In this section, " intermediary " means any person who, not being an owner has an interest in the urban land, and is entitled, by reason of such interest, to possession thereof, but has transferred such possession to others.

Obligation of transferror and transferee to give notice of transfer.

18. (1) Whenever the title of any person primarily liable to the payment of urban land tax on any urban land is transferred, the person whose title its transferred and the person to whom the same is transferred shall, within three months after the execution of the instrument of transfer or after its registration, if it be registered, or after the transfer is effected, if no instrument be effected, give notice of such transfer to the Urban Land Tax Officer.

(2) In the event of the death of any person primarily liable as aforesaid, the person to whom the title of the deceased shall be transferred as heir or otherwise, shall give notice of such transfer to the Urban Land Tax Officer within one year from the death of the deceased.

(3) The notice to be given under this section shall be in such form as may be prescribed and the transferee or the person to whom the title passes, as the case may be, shall, if so required, be bound to produce before the Urban Land Tax Officer, any document evidencing such transfer or succession.

(4) Every person who makes a transfer as aforesaid, without giving such notice to the Urban Land Tax Officer shall (in addition to any other liability which he may incur through such neglect), continue liable for the payment of the urban land tax assessed on the urban land transferred, until he gives notice or until the transfer shall have been recorded in the revenue registers, but nothing in this section shall be held to affect the liability of the transferee for the payment of the said tax.

CHAPTER IV.

APPEAL.

Appeal to the Tribunal against orders of Assistant Commissioner.

19. (1) (*a*) Any assessee objecting to any order passed by the Assistant Commissioner under section 10 or 11 may appeal to the Tribunal within thirty days from the date of the receipt of the copy of the order.

(*b*) Any person denying his liability to be assessed under this Ordinance may appeal to the Tribunal within thirty days from the date of the receipt of the notice of demand relating to the assessment :

Provided that no appeal shall lie under clause (*a*) or clause (*b*) of this sub-section unless the urban land tax has been paid before the appeal is filed.

(2) The Commissioner may, if he objects to any order passed by the Assistant Commissioner under section 10 or 11, direct the Urban Land Tax Officer concerned to appeal to the Tribunal against such order, and such appeal may be filed within sixty days from the date of the receipt of the order by the Commissioner.

(3) The Tribunal may admit an appeal after the expiry of the period referred to in clause (*a*) or clause (*b*) of sub-section (1) or in sub-section (2), as the case may be, if it is satisfied that there was sufficient cause for not presenting it within that period.

(4) An appeal to the Tribunal under this section shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by such fee as may be prescribed.

(5) The Tribunal may after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit and shall communicate any such orders to the assessee and to the Commissioner in such manner as may be prescribed.

(6) Any order passed by the Tribunal under this section shall be final.

Refund.

20. (1) Where as a result of any order passed in appeal or other proceeding under this Ordinance,—

(*a*) refund of any amount becomes due to the assessee, such amount shall be refunded to him without interest ; or

(*b*) any further amount of tax is due from the assessee, such amount shall be collected in accordance with the provisions of this Ordinance.

(2) Where under any of the provisions of this Ordinance a refund is due to any person, the Urban Land Tax Officer may in lieu of payment of the refund set off the amount to be refunded or any part of that amount against the sum, if any, remaining payable under this Ordinance by the person to whom refund is due after giving an intimation in writing to such person of the action proposed to be taken under this section.

CHAPTER V.

SURVEY OF URBAN LAND.

Survey of urban land.

21. (1) Any officer specially empowered by an order in this behalf by the Board of Revenue shall carry out survey of all urban lands in the area specified in such order, or, if such lands have already been surveyed, carry out re-survey of such lands for the purpose of carrying out the purposes of this Ordinance.

(2) The survey or re-survey carried out under sub-section (1) shall, subject to such rules as may be made by the Government in this behalf, be in accordance with the principles contained in the Madras Survey and Boundaries Act, 1923 (Madras Act, VIII of 1923).

(3) The cost of the survey or re-survey under this section shall be borne by such persons and to such extent as may be prescribed.

CHAPTER VI.

Special Provisions.

Urban land tax to be in lieu of, and in addition to, certain taxes.

22. The urban land tax payable under this Ordinance in respect of any urban land shall be in lieu of—

(i) the ryotwari assessment ;

(ii) the assessment levied under the Madras Inams (Assessment) Act, 1956 (Madras Act XL of 1956) or under the Andhra Inams (Assessment) Act, 1955 (Andhra Act XVII of 1955) ;

(iii) the ground rent ;

(iv) the quit rent ;

(v) any amount due under the Madras City Land Revenue Act, 1851 (Central Act XII of 1851);

(vi) such other amount as the Government may, by special order, specify, payable in respect of such land ; but shall be in addition to any tax on such land payable under any other law for the time being in force.

Urban land tax not to be taken into account for compensation in certain cases.

23. Notwithstanding anything contained in this Ordinance or in any other law for the time being in force, the urban land tax payable under this Ordinance shall not be taken into account for the purposes of payment of compensation under—

(*a*) the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948);

(*b*) the Madras Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (Madras Act XXVI of 1963) ;

(*c*) the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Madras Act XXX of 1963) ; or

(*d*) the Madras Lease-holds (Abolition and Conversion into Ryotwari) Act, 1963 (Madras Act XXVII of 1963).

Addition of urban land tax to rent in certain cases.

24. Notwithstanding anything contained in the Madras City Tenants' Protection Act, 1921 (Madras Act III of 1922) or in the Madras Buildings (Lease and Rent Control) Act, 1960 (Madras Act XVIII of 1960), where in any case the amount of the urban land tax payable in respect of any land under this Ordinance is in excess of one half of the amount of the annual rent payable in respect of such land or the building thereon under any of the said Acts, the Court, authority or officer empowered to fix the rent under any of the said Acts, may, on application from the owner, add to the annual rent aforesaid, an amount not exceeding the difference between the urban land tax payable under this Ordinance and one half of the annual rent aforesaid.

Concession in respect of owner-occupied buildings.

25. (1) Where any building is occupied wholly by the owner for residential purposes only and where such owner makes an application to the Urban Land Tax Officer, that Officer shall, subject to such rules as may be made in this behalf and after satisfying himself about the facts stated in the application, reduce by twenty-five per centum the amount of urban land tax payable on the urban land on which the building has been constructed and on the urban land appurtenant to such building.

(2) The application under sub-section (1) shall be made in such form and within such period as may be precribed.

Power of Government to exempt or reduce urban land tax.

26. (1) The Government, if satisfied that the payment of urban land tax in respect of any class of urban lands or by any class of persons will cause undue hardship, they may, subject to such rules as may be made in this behalf, by order,—

(*a*) exempt such lands or persons for the payment of the urban land tax; or

(*b*) reduce the amount of such urban land tax, whether prospectively or retrospectively.

(2) The Government may at any time cancel or modify any order issued under sub-section (1) and upon such cancellation or modification, the entire amount of urban land tax, or the amount of urban land tax due under the modified order, as the case may be, shall be payable in respect of the land concerned with effect from the fasli year in which such cancellation or modification is made :

Provided that no such cancellation or modification shall be made unless the party likely to be affected by such cancellation or modification has had a reasonable opportunity of making his representations.

Conversion of agricultural land into urban land.

27. Where any land which is registered as wet in the revenue accounts of the Government and used for cultivation of wet crops is converted as a building site after the date of the commencement of this Ordinance the owner of such land shall be liable to pay urban land tax with effect from the fasli year in which such conversion is effected.

CHAPTER VII.

EXEMPTIONS.

Exemptions.

28. Nothing in this Ordinance shall apply to—

(*a*) any urban land owned by the State or the Central Government ;

(*b*) any urban land owned by—

(i) the Corporation of Madras ;

(ii) a municipal council constituted under the Madras District Municipalities Act, 1920 (Madras Act V of 1920) ;

(iii) a township committee constituted under the Mettur Township Act, 1940 (Madras Act XI of 1940), the Courtallam Township Act, 1954 (Madras Act XVI of 1954), the Bhavanisagar Township Act, 1954 (Madras Act XXV of 1954), or section 4 of the Madras Panchayats Act, 1958 (Madras Act XXXV of 1958), or under any other law for the time being in force ;

(iv) a Panchayat or Panchayat Union Council constituted under any law for the time being in force ;

(*c*) any urban land set apart for public worship and is actually so used ;

(*d*) any urban land on which hospitals primarily maintained by the Government, any local authority or such other authority specified by the Government in this behalf, have been constructed and any urban land appurtenant to such hospitals ;

(*e*) any urban land solely used for purposes connected with the disposal of the dead ;

(*f*) roads or urban lands used for communal purposes ;

(*g*) urban lands used for public purposes, provided that no rent is charged for, or no remuneration is derived from, such user ;

(*h*) any urban land on which any building used for purposes of schools, colleges or universities has been constructed and any urban land appurtenant to such building and any urban land used for public parks, public libraries, public museums, or used as play-grounds attached to schools, colleges or universities ;

(i) such urban land owned by any school, college or university, as the Government may, by notification, specify ;

(*j*) urban land used—

(i) for charitable purposes of sheltering destitute persons or animals ;

(ii) for orphanages, homes and schools for the deaf and dumb and for the infirm and diseased ;

(iii) for asylum for the aged and for fallen women ;

(iv) for such other philanthropic institutions as the Government may, by notification, specify ;

(*k*) urban lands used for the preservation of ancient monuments.

CHAPTER VIII.

MISCELLANEOUS.

Revision by Board of Revenue.

29. (1) The Board of Revenue may, either on its own motion or on application made by the assessee in this behalf, call for and examine the records of any proceeding under this Ordinance (not being a proceeding in respect of which an appeal lies to the Tribunal under section 19) to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and if, in any case, it appears, to the Board of Revenue that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly :

Provided that the Board of Revenue shall not pass any order under this sub-section in any case, where the decision or order is sought to be revised by the Board of Revenue on its own motion, if such decision or order had been made more than three years previously :

Provided further that the Board of Revenue shall not pass any order under this section prejudicial to any party unless he has had a reasonable opportunity of making his representations.

(2) The Board of Revenue may stay the execution of any such decision or order pending the exercise of its powers under sub-section (1) in respect thereof.

(3) Every application to the Board of Revenue for the exercise of its powers under this section shall be preferred within three months from the date on which the order or proceeding to which the application relates was communicated to the applicant :

Provided that the Board of Revenue may, in its discretion, allow further time not exceeding one month for the filing of any such application if it is satisfied that the applicant had sufficient cause for not preferring the application within the time specified in this sub-section.

Computation of period of limitation.

30. In computing the period of limitation prescribed for an appeal or revision against any decision or order under this Ordinance the time required for obtaining the certified copy of the decision or order shall be excluded.

Power to rectify any error apparent on the face of the record.

31. (1) The Urban Land Tax Officer, or the Assistant Commissioner, or the Board of Revenue, or the Tribunal may at any time within three years from the date of any order passed by him or it, rectify any error apparent on the face of the record :

Provided that no such rectification which has the effect of enhancing an assessment, shall be made unless such authority has given notice to the assesee and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessement, the amount due to the assessee shall be refunded to him.

(3) Where any such rectification has the effect of enhancing an assessment already made, the Urban Land Tax Officer shall give the assessee a revised notice of demand and thereupon the provisions of this Ordinance and the rules made thereunder shall apply as if such notice had been given in the first instance.

Power to take evidence on oath, etc.

32. (1) The Tribunal, the Board of Revenue, the Commissioner, the Assistant Commissioner, or the Urban Land Tax Officer or any other officer empowered under this Ordinance shall, for the purposes of this Ordinance, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Central Act V of 1908), when trying a suit in respect of the following matters, namely :—

(*a*) enforcing the attendance of any person and examining him on oath ;

(*b*) requiring the discovery and production of documents ;

(*c*) receiving evidence on affidavit ;

(*d*) issuing commissions for the examination of witnesses ;

and any proceeding before the Tribunal, the Board of Revenue, the Commissioner, the Assistant Commissioner, the Urban Land Tax Officer or any other officer empowered under this Ordinance shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (Central Act XLV of 1860).

(2) In any case in which an order of assessment is passed *ex parte* under this Ordinance the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908), shall apply in relation to such order as it applies in relation to a decree passed *ex parte* by a Court.

Power to call for information.

33. Where, for the purposes of determining the urban land tax payable by any person, it appears necessary for any authority or officer referred to in section 3 to obtain any statement or information from any person, it or he may serve a notice requiring such person on or before a date to be therein specified, to furnish a statement or information on the points specified in the notice and that person shall, notwithstanding anything in any law to the contrary, be bound to furnish such statement or information to such authority or officer :

Provided that no legal practitioner shall be bound to furnish any statement or information under this section based on any professional communication made to him otherwise than as permitted by section 126 of the Indian Evidence Act, 1872 (Central Act I of 1872).

Service of notice.

34. (1) A notice under this Ordinance may be served on the person therein named, either by post, or as if it were summons issued by a Court under the Code of Civil Procedure, 1908 (Central Act V of 1908).

(2) Any such notice may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm, or to the manager or any adult member of the family, and in the case of a company or association of persons, be addressed to the principal officer thereof.

Power of Government to issue orders and directions.

35. The Government may issue such orders and directions of a general character, as they may consider necessary in respect of any matter relating to the powers and duties of the Board of Revenue, the Commissioner, the Assistant Commissioner, the Urban Land Tax Officer or any other officer empowered under this Ordinance. The authority or officer referred to above shall give effect to all such orders and directions.

Delegation of powers.

36. The Government may, by notification, direct that any power of function exercisable by the Government, the Board of Revenue, the Commissioner, Assistant Commissioner or Urban Land Tax Officer under this Ordinance or the rules made thereunder shall in relation to such matters and subject to such conditions as may be specified in such notification, be exercisable also by such officer or authority subordinate to the Government as may be specified in such notification.

Bar of suits in civil courts.

37. (1) No suit shall lie in any civil Court to set aside or modify any assessment made under this Ordinance.

(2) Except as otherwise provided in this Ordinance, the decision of any authority or officer under this Ordinance shall be final and no civil Court shall have jurisdiction to decide or deal with any question which by or under this

Ordinance is required to be decided or dealt with by the authorities or officers under this Ordinance.

Indemnity.

38. No suit, prosecution or other legal proceeding shall lie against the Government, Tribunal, the Board of Revenue, the Commissioner, the Assistant Commissioner, the Urban Land Tax Officer or any other officer empowered under this Ordinance for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made thereunder.

Power to enter upon land.

39. The Commissioner, the Assistant Commissioner, the Urban Land Tax Officer, or any other officer empowered under this Ordinance or any person acting under the orders of any such officer, may enter upon any urban land with such other officers and persons as he considers necessary and make a survey and take measurements thereof or do any other act which he considers necessary for carrying out the purposes of this Ordinance.

Certain records to be made use of for purposes of this Ordinance.

40. For the purposes of carrying into effect the provisions of this Ordinance, the authorities or officers specified in this Ordinance shall, to the extent necessary, make use of the records prepared before the date of the commencement of this Ordinance by the Special Officer for Urban Taxation, the Collector of Madras and any officer subordinate to them.

Preparation of book of assessment.

41. The Government may, for the purposes of this Ordinance, cause to be prepared a book of assessment containing—

(*a*) particulars of urban land ;

(*b*) the name of the assessee ;

(*c*) the market value of the urban land ;

(*d*) the amount of urban land tax payable in respect of the urban land ; and

(*e*) such other particulars as may be prescribed.

Power to make rules.

42. (1) The Government may make rules to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) all matters expressly required or allowed by this Ordinance to be prescribed ;

(*b*) the procedure to be followed by the Tribunal under this Ordinance ;

(*c*) the form of appeal and application for revision under this Ordinance ;

(*d*) the procedure to be followed by the Board of Revenue when exercising the powers of revision under this Ordinance ;

(*e*) the fees payable in respect of applications and appeals under this Ordinance ;

(*f*) the manner of rounding of the total amount of tax due from an assessee.

Power to remove difficulties.

43. If any difficulty arises in giving effect to the provisions of this Ordinance, the Government may, as occasion may require, by order do anything which appears to them necessary for the purpose of removing the difficulty.

Rules and orders to be placed before the Legislature.

44. (1) All rules made under this Ordinance and all orders made under section 43 shall be published in the *Fort St. George Gazette* and, unless they are expressed to come into force on a particular day shall come into force on the day on which they are so published.

(2) Every rule made under this Ordinance and every order made under section 43 shall, as soon as possible after it is made, be placed on the table of both

Houses of the Legislature, and if, before the expiry of the session in which it is so placed or the next session, both Houses agree in making any modification in any such rule or order or both Houses agree that the rule or order should not be made, the rule or order shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or order.

Repeal of Madras Act XXXIV of 1963.

45. The Madras Urban Land Tax Act, 1963 (Madras Act XXXIV of 1963) is hereby repealed.

Amount paid under Madras Act XXXIV of 1963 deemed to be amount of urban land tax provisionally paid.

46. The amount of urban land tax already collected under the Madras Urban Land Tax Act, 1963 (Madras Act XXXIV of 1963) shall be deemed to be the urban land tax provisionally paid by the assessee concerned in respect of the faslis for which it was paid and shall remain as security with the Government pending assessment of the urban land tax due from such assessee in accordance with the provisions of this Ordinance. Upon such assessment, the said amount shall be adjusted toward the urban land tax due from him on such urban land and if the tax on such assessment—

(i) is in excess of the amount of urban land tax already collected from such person, such excess shall be recovered from him ; or

(ii) is less than the amount of urban land tax already collected from such person, the difference shall be refunded to him.

EXPLANATORY STATEMENT.

The Madras Urban Land Tax Act, 1963 (Madras Act XXXIV of 1963) provides for the levy of an urban land tax at the rate of 0.4 per centum of the average market value of the urban land in a sub-zone. In Writ Petition Nos. 2191 of 1965, etc., the Madras High Court held that the above Act was discriminatory and that it violated Article 14 of the Constitution. The Government have examined the judgment of the High Court and have decided to enact a new legislation in conformity with the decision of the High Court.

2. The Ordinance seeks to achieve the above objects.

THE MADRAS LEGISLATURE (PREVENTION OF DISQUALIFICATION) ORDINANCE, 1966.

Promulgated by the Governor on the 31st December, 1966.

Published in the Fort St. George Gazette (Extraordinary), *Part IV, Section* 4, *page* 167. *dated* 31*st December*, 1966.

An Ordinance to declare that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as, or for being, members of the State Legislature.

WHEREAS the Legislature of the State is not in session and the Governor of Madras is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose hereinafter appearing;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution, the Governor hereby promulgates the following Ordinance:

Short title and commencement.

1. (1) This Ordinance may be called THE MADRAS LEGISLATURE (PREVENTION OF DISQUALIFICATION) ORDINANCE, 1966.

(2) It shall be deemed to have come into force on the 1st day of April, 1964.

Certain offices of profit not to disqualify.

2. It is hereby declared that none of the offices specified in the Schedule shall disqualify, or shall be deemed ever to have disqualified, the holder thereof for being chosen as, or for being, a member of the Legislative Assembly or of the Legislative Council.

Amendment of Madras Act XX of 1951.

3. In the Madras Payment of Salaries and Removal of Disqualifications Act, 1951 (Madras Act XX of 1951)—

(1) in the long title, the words "and for the removal of certain disqualifications" shall be omitted ;

(2) in the preamble, the second paragraph shall be omitted ;

(3) in section 1, the words "and Removal of Disqualifications" shall be omitted ; and

(4) section 11, shall be omitted.

Amendment of section 17, Madras Act III of 1963.

4. In section 17 of the Madras Home Guard Act, 1963 (Madras Act III of 1963)—

(1) sub-section (1) shall be omitted; and

(2) the brackets and figure '(2)' occurring at the commencement of sub-section (2) shall be omitted.

THE SCHEDULE.

[*See* section 2.]

1. The office of Minister of State or Deputy Minister for the Union or for any State.

2. The office of Chief Whip, Deputy Chief Whip, Whip or Parliamentary Secretary.

3. The office of Sheriff in the City of Madras.

4. The office of member of any delegation or mission sent outside India by the Government for any special purpose.

5. The office of member of a committee (not being a body specified in item 11), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter.

6. The office of member of any force raised or maintained under the National Cadet Corps Act, 1948 (Central Act XXXI of 1948), the Territorial Army Act, 1948 (Central Act LVI of 1948), or the Reserve and Auxiliary Air Forces Act, 1952 (Central Act LXII of 1952).

7. The office of member of a Home Guard constituted under any law for the time being in force in any State.

8. The office of honorary medical officer or honorary assistant medical officer in any hospital maintained by the Government.

9. The office of examiner or assistant examiner for any examination held by the Central or State Government or by the Union or State Public Service Commission.

10. The office of director of the—

(1) Madras Industrial Investment Corporation, Limited ;

(2) Neyveli Lignite Corporation, Limited ;

(3) Madras State Small Industries Corporation Limited.

11. The office of member or secretary of the—

(1) Advisory Committee for a Rural Extension Training Centre ;

(2) Advisory Committee for Iron and Steel under Agricultural Quota and Agricultural Implements ;

(3) Board of Examiners for Cinema Operators ;

(4) Board of Visitors under rule 41 of the Suppression of Immoral Traffic in Women and Girls (Madras) Rules, 1958 ;

(5) Committees for the Selection of Auxiliary Nurse Midwife Pupils ;

(6) Committee for the Selection of Nurse Pupils ;

(7) Forage Resources Board ;

(8) Madras State Film Advisory Board ;

(9) Managing Committees for the Aftercare Homes at Madras and Vellore ;

(10) State Agricultural Advisory Committee ;

(11) State Campaign Committee for Freedom from Hunger ;

(12) State Committee on Employment ;

(13) State Level Co-ordination Committee on Training ;

(14) State Social Welfare Board ;

(15) Allocation Committee under the Employees State Insurance (Medical Benefit) Panel System Rules, 1954 ;

(16) Board of Examinations, Madras ;

(17) Board of Studies to review the existing *syllabi* and *curricula* for the various courses conducted in the polytechnics and to suggest suitable modifications ;

(18) Greater Madras Road Development and Traffic Planning Committee ;

(19) Madras City Road Development and Traffic Planning Committee ;

(20) Madras State Road Development and Traffic Planning Committee ;

(21) Medical Service Committee ;

(22) Project Level Committees for Rural Industries at Nanguneri, Omalur and Sriperumpudur ;

(23) State Level Advisory Committee for Rural Industries ;

(24) Wenlock Downs Advisory Committee ;

(25) Inspection Committee, Madras ;

(26) Madras State Khadi and Village Industries Board established under the Madras Khadi and Village Industries Board Act, 1959 (Madras Act XVIII of 1959) ;

(27) Madras State Housing Board constituted under the Madras State Housing Board Act, 1961 (Madras Act XVII of 1961) ;

(28) Madras State Warehousing Corporation established under the Warehousing Corporations Act, 1962 (Central Act LVIII of 1962).

EXPLANATORY STATEMENT.

Section 11 of the Madras Payment of Salaries and Removal of Disqualifications Act, 1951 (Madras Act XX of 1951), provides that no person shall be disqualified for being chosen as, or for being, a member of the State Legislature, by reason only of the fact that he holds the office of Parliamentary Secretary or that he has been enrolled in the National Cadet Corps or in the Territorial Army or in the Air Defence Reserve or the Auxiliary Air Force. Sub-section (1) of section 17 of the Madras Home Guard Act, 1963 (Madras Act III of 1963), removes the disqualification of members of the Home Guard for membership of the State Legislature. Under the law as in force in this State, if a person holds any other office of profit under Government, he will be disqualified for being chosen as, or for being, a member of the State Legislature. The corresponding law applicable to

membership of Parliament is the Parliament (Prevention of Disqualification) Act, 1959 (Central Act X of 1959). The Central Act is comprehensive in nature and covers membership of statutory as well as non-statutory bodies. It is considered necessary that the law applicable to membership of the State Legislature should be more comprehensive and that the subject should be dealt with in a separate enactment, repealing section 11 of the 1951 Madras Act and section 17 (1) of the 1963 Madras Act. The matter has assumed urgency in view of the ensuing general elections. It is considered that persons who are members of the various bodies in question should be enabled to contest the elections without their eligibility to stand for the election being challenged on the ground that they hold offices of profit under Government.

2. The Ordinance seeks to achieve the above object.

Srinivasan, J.
29*th November*, 1965.

M. S. Shaik Mohamed Shah *v.*
State of Madras.
W.P. No. 1265 of 1965.

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 3 (9) (*a*) (ii) *—Premises under Government requisition—Allotment by Government to an officer—Allottee, a licensee—Power of Government to take possession after terminating licence.*

On the third respondent, the original allottee of the premises intimating the Government that the accommodation was in excess of his requirements, the Government took back a portion of the premises and allotted the same to the petitioner. Subsequently the Government put an end to the allotment made to the petitioner and required him to vacate and deliver possession to the Accommodation Controller. The petitioner applied under Article 226 of the Constitution to quash the order.

Held, the writ cannot issue.

A Government servant, who has been allotted premises of which the Government is the statutory tenant and which the Government have taken possession of under the provisions of the Rent Control Act, is nothing more than a licensee. It would therefore follow that the Government would be within their rights in cancelling the licence and seeking to recover possession of the premises. Section 3 (9) (*a*) (ii) of the Rent Control Act is specifically intended to confer upon the Government this remedy of taking possession and the existence of this provision itself makes it quite clear that a Government servant who has been allotted premises is only a licensee.

S. Padmanabhan for *V. Narayanaswamy* and *K. R. Ramabadran*, for Petitioner.

K. S. Bakthavatsalam for Additional Government Pleader, for Respondents 1 and 2.

Asif Ali, for Third Respondent.

V.S.

Petition dismissed.

Sadasivam, J.
6*th December*, 1965.

P. S. Sadagopachari *v.* State.
Cr.R.C. No. 1375 of 1965
(Cr.R.P. No. 1351 of 1965).

Criminal Law Amendment Act (XLVI of 1962), *section* 8 (1)*—Complaint by Collector of Customs in respect of offences under Penal Code read with offences under Prevention of Corruption Act and Sea Customs Act—Special Judge—May take cognizance on the private complaint.*

The Collector of Customs preferred a complaint against the petitioners and others under section 120-B read with sections 161, 165, 165-A of the Penal Code, section 5 (2) read with section 5 (1) (*d*) of the Prevention of Corruption Act (II of 1952), section 5 (2) of Act II of 1952 read with section 109, Penal Code and section 167, clauses 75, 76 and 81 of the Sea Customs Act read with sections 19 and 5 of the Imports and Exports (Control) Act, apart from other specific offences against the individual accused.

Under section 8 (1) of the Criminal Law Amendment Act, the Special Judge can take cognizance of the offences even on a complaint by the Collector of Customs.

It is doubtful if the Special Judge would have the power to order an enquiry under section 202 of the Criminal Procedure Code.

G. Gopalaswami, for Petitioners.

Public Prosecutor, (*V. P. Raman*) on behalf of State.

V.S.

Petition dismissed.

Veeraswami, J.
10*th December*, 1965.

Chinnathambi Moopan *v.*
Mamundi Mooppan.
C.R.P. No. 625 of 1963.

Madras Hindu Religious and Charitable Endowments Act (*XXII of* 1959), *section* 63 (*e*)—*Disputes within the powers of Deputy Commissioner—Honour, emolument or perquisite in any religious institution—Rival claims, whether office of Mooppanar vested in a particular community or another person—No plea, usage or custom of the Devasthanam governs vesting of the right to office either in the community or the other person—Dispute is within the jurisdiction of the Civil Court.*

The plaintiffs suing for themselves and for certain villagers, claimed that the right of doing Moopu service (cleaning the streets, guiding the temple car and doing other miscellaneous work) vested in them. The defendant claimed that this right vested in him. On the question whether the dispute fell within the powers of Deputy Commissioner for decision,

Held, the dispute fell within the jurisdiction of the Civil Court.

Where there is no controversy about the office or the emoluments attached to the office, in relation to the services rendered in exercise of the right under the office, but was confined to the question whether the office is vested in the community of Pallars or whether it vested in another person, the dispute does not fall within the scope of section 63 (*e*) of the Madras Hindu Religious Endowments Act. There was also no plea that the usage or custom of the Devasthanam governs the vesting of the right to the office either in the community or in the other person.

R. Rangachari, for Petitioner.

M. V. Krishnan, for 1st Respondent.

T. M. Chinnayya Pillai, for 2nd Respondent.

V.S.

Petition allowed.

Natesan, J.
15*th December*, 1965.

T. K. Chennakesavalu *v.* Mansukhlal.
C.R.P. No. 574 of 1965.

Madras Buildings (*Lease and Rent Control*) *Act* (*XVIII of* 1960) *and rule* 26 *of the Rules and Civil Procedure Code* (*V of* 1908), *Order* 26, *rules* 1 *and* 2—*District Judge sitting in revision dealing with a petition for eviction on the ground of sub-letting—Appointment of a Commissioner to gather evidence on sub-letting and persons in occupation—Order wholly beyond jurisdiction—Powers of inspection.*

The order of the District Judge sitting in revision in a matter of eviction on the ground of sub-letting, appointing a Commissioner with a direction to gather evidence on the question whether there has been sub-letting and who are the persons that were in occupation of the premises, would be wholly beyond his jurisdiction.

Even the Rent Controller or the Appellate Authority cannot have such powers as was directed to be done by the District Judge in revision.

The Code is not applicable as such to the Rent Controller and the only power with reference to inspection of buildings is to be found in rule 26 of the Rules framed under the Act. Rule 26 enables the inspection of buildings by the Controller and the Appellate Authority and empowers an inspection note to be made. Such note shall form part of the case record.

P. S. Srisailam, for Petitioner.

T. Satyadev, for Respondents.

V.S.

Petition allowed.

[SUPREME COURT.]

P.B. Gajendragadkar, C.J.
K. N. Wanchoo, M. Hidayatullah,
V. Ramaswami, JJ.
14th October, 1965.

Yenmula Malludora *v.*
Peruri Seetharatnam
C.A. No. 474 of 1964.

Provincial Insolvency Act (*V of* 1920), *sections* 6, 7 *and* 25—*Debtor's property sold in execution of money decree—Sale set aside under Order* 21, *Rule* 89, *Civil Procedure Code—Act of insolvency if wiped out—If sufficient cause for refusal to adjudicate under section* 25.

The jurisdiction of the Court commences when an act of insolvency takes place and that act gives a creditor of his the right to apply to the Court for his adjudication under section 7 within 3 months of that act of insolvency. Sale of a person's property in execution of a decree for payment of money is an act of insolvency under section 6. Once such an act is committed it cannot be explained or purged by subsequent events.

Section 25 expressly mentions three circumstances in which the creditors' petition may be dismissed ; in addition the Court has been given a discretion to dismiss the petition if it is satisfied that there is other sufficient cause for not making the order against the debtor. This last clause of the section need not necessarily be read *ejusdem generis* with the previous once, but even so there can be no sufficient cause if, after an act of insolvency is established the debtor is unable to pay his debts. The discretion to dismiss the petition can only be exercised under very different circumstances than that alleged (setting aside the sale which was the act of insolvency).

There is no proof malicious or inequitable dealing on the part of the petitioning creditors (respondent herein). They have proved the necessary facts both the act of insolvency and the inability of the appellant to pay his debts. In fact the appellant has admitted his inability to pay his debts.

M. C. Setalvad, Senior Advocate, (*T. V. R. Tatachari*, Advocate, with him), for Appelleant.

Kirpa Narain, Senior Advocate, (*T. Satyanarayana*, Advocate, with him), for Respondents 1 and 9.

K.G.S.

Appeal dismissed

[SUPREME COURT.]

P.B. Gajendragadkear C.J.
K.N. Wanchoo, M. Hidayatullah
and *V. Ramaswami, JJ.*
3rd November, 1965.

The Salem-Erode Electrictity
Distribution Company (P.), Ltd. *v.*
Their Employees' Union.
C.A. No. 305 of 1964.

Industrial Employment (*Standing Orders*) *Act* (*XX of* 1946), *as amended by Act XXXVI of* 1956—*Object of —More than one set of Standing Orders—If can be certified under* (*though fair and reasonsable*).

On the question, whether under the scheme of the Act, it is permissible to the employer to require the appropriate authorities under the Act to certify two sets of Standing Orders in regard to any of the matters covered by the Schedule (leave and holidays in the instant case).

Held, though the new Standing Orders proposed in respect of new entrants may be reasonable, two sets of Standing Orders cannot be made under the Act to govern the employees in the same industrial establishment.

The object of the Act is to certify Standing Orders in respect of the matters covered by the schedule thereto and having regard to these matters Standing Orders so certified would be uniform and would apply to all workmen alike, who are employed in an industrial establishment so as to avoid any industrial unrest and disharmony because of discrimination.

Quaere :—Whether any dispute in regard to matters covered by certified Standing Orders can be referred to the Industrial Tribunal for adjudication notwithstanding the self-contained provisions of Act XX of 1946 ?

M. C. Setalvad, Senior Advocate (*Naunit Lal*, Advocate, with him) *for* Appellant.

M. K. Ramamurthi (*R. K. Garg*, *D. P. Singh* and *S. C. Agarawala*, for *M/s. M. K. Ramamurthi & Co.*), for Appellant.

K.G.S. *Appeal dissmissed.*

[Supreme Court.]

P.B. Gajendragadkar, C.J., *K.N. Wanchoo, V. Ramaswami* and *P. Satyanarayana Raju, JJ.*
4th November, 1965.

M/s. British Paints (India), Ltd. *v.* Its Workmen.
C.A.Nos. 246 and 287 of 1965.

Industrial Dispute—Age of retirement—Distinction between clerical and subordinate staff and workmen in factory—Gratuity scheme (Provident Fund Scheme already existing)—Minimum period of service—Quantum—Basis of—Basic wage or wage and dearness allowance together.

Considering the improvement in the standard of health and increase in the longevity in this country during the last fifty years, the age of retirement should be fixed at a higher level ; fixing the age of retirement generally at 60 years would be fair and proper unless there are special circumstances justifying fixation of a lower age.

Generally speaking, there is no reason for making a difference in that behalf between the clerical staff and subordinate staff on the one hand and the factory workman on the other, unless justified on valid grounds, *e.g.*, work in the factory being much more arduous as compared with the clerical staff as in a heavy engineering concern. In this paint manufacturing concern the work in the factory cannot be considered particularly arduous to fix a lower age.

The age of retirement of both the categories has to be fixed at 60 years. The power of the employer to terminate the services of a workman, if he becomes physically or mentally incapable of working, being there, there is no reason that such fixing at 60 years would impair the efficiency of work ; on the other hand there will be the added advantage of having the more experienced workman and thereby greater efficiency.

A longer minimum period of service in the case of voluntary retirement or resignation is necessary ; for, it makes it more probable that the workmen would stick to the company where they are working. Hence the minimum period of qualifying service in such cases would be ten years and not five (as per the award).

The employee would be getting double retiring benefit (*i.e.*), provident fund and gratuity. In such a case the Tribunal should not have defined basic wages as including dearness allowance. There is also no case for increasing the 21 days' wages per year of service to 30 days' wages as claimed by workman.

M.C. Setalvad, Senior Advocate (*D. N. Mukherjee*, Advocate with him), for Appellant in C.A.No. 246 of 1965 and for Respondent in C.A.No. 287 of 1965.

A.S.R. Chari, Senior Advocate (*B. P. Maheswari*, Advocate with him), for Respondent in C.A. No. 246 of 1965 and for Appellant in C.A. No. 287 of 1965.

K.G.S. *Appeals partly allowed.*

Venkatadr, J.
30*th November*, 1965.

Palani Goundan *v.*
Ramaswami Goundan
A.A.A.O. No. 136 of 1962

Limitation Act (*IX of* 1908), *Article* 182 (1)—*Conditional decree for possession on deposit of money by decree-holder—No time fixed for deposit of money—Limitation for executing decree for possession—Three years from date of decree.*

Where no time is fixed for payment of money in a conditional decree for possession on deposit of a sum of money by the decree-holder, the period of limitation for executing the decree for possession would begin to run from the date of the decree and not from the date of the deposit of the money by the decree-holder.

Rangah Goundar v. *Nanjappa Rao*, I.L.R. 26 Mad. 780 : 13 M.L.J. 412. followed.

V. S. Subramanan, for Appellant.

R. Sitaraman amicus curiae, for Respondent.

V.S.

Appeal allowed

Venkatadri, J.
5*th January*, 1966.

P. Arumuken *v.* Rethnammal,
A.A.O. No. 172 of 1964.

Motor Vehicles Act (*IV of* 1939), *section* 110—*Claims Tribunal—Driver of motor car overtaking a lorry after taking the signal—Dashing against a tin in the act of such overtaking and the tin dashing against the deceased causing death—Compensation—Act of the driver, if a rash and negligent act.—Principles.*

The driver of the motor car owned by the first respondent, had to overtake a lorry and after taking the signal of the lorry driver, in the act of overtaking dashed against a P.W.D. tin which in turn, dashed against a girl sitting on a parapet wall nearby causing injuries to the girl who succumbed to the injuries later. The driver was acquitted in the criminal Court. On a claim for compensation made by the father of the deceased before the Claims Tribunal,

Held, the accident was an inevitable accident for which the respondents could not be held liable. There was no rashness and negligence on the part of the driver.

It is true that there is a duty on the part of the driver of a motor car to observe the ordinary care or skill towards persons using the highway, whom he could reasonably foresee as likely to be affected. The negligence must be so great that the offneder had a wicked mind in the sense of being reckless or careless whether death occured or not. But negligence does not mean, even for criminal negligence, absolute carelessness or indifference but want of such a degree of care as is required in particular circumstances.

V. V. Raghavan and *T. S. Subramanian*, for Appellant.

K. Yamunan for *K. Tirumalai*, for 1st Respondent.

Sundaran and *Sivaswami*; for 2nd Respondent.

V.S.

Appeal dismissed.

Veeraswami, J.
6*th January*, 1966.

C. D. Sekkizhar *v.*
Secretary, Bar Council.
W.P. No. 4313 of 1965.

Advocates Act (*XXV of* 1961), *section* 7 (2) *and Explanation—Legal profession—Elections to Bar Council—Announcement or convassing in person, by post or otherwise—Electoral misconduct—Rule prescribing prohibition, reasonable and valid.*

Having regard to the high ideals and place of the legal profession, section 7 (2) read with the Explanation, prohibiting the announcement or convassing in person,

by post or otherwise by any advocate of his candidature to the Bar Council, is reasonable and valid.

S. Mohan, for Petitioner.

A. Balasubramanian, for 1st Respondent.

G. K. Damodara Rao, for 2nd Respondent.

V.S. ——— *Petition dismissed.*

Nathella Sampathu Chetty *v.* Sha Vajingjie Babu Lal, a firm. C.R.P. No. 225 of 1964.

Natesan, J.
7th January, 1966.

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 10 (3) (*a*) (iii)—*Petitioner, tenant of a limited company—Limited company consisting of members of petitioner's family—Constitution of the company, not attacked as a camouflage—Purchase by petitioner of another building—Application for evicting tenant of such property for his purposes—If would lie.*

The petitioner was a tenant of a limited company which consisted of the members of his family. The petitioner himself purchased the property in question and wanted it for his own purposes. The formation of the limited company was not attacked as a camouflage and a sham to get round the provisions of the Act. The limited company would be a distinct juristic entity and the petitioner cannot be held to be in occupation of a premises of his own. The application by the petitioner for evicting the tenant of the property that was purchased by him long time after the formation of the limited company, for the purpose of carrying on his own business would lie under section 10 (3) (*a*) (iii) of the Rent Control Act.

S. K. L. Ratan of *K. C. Jacob* and *K. L. Ratan*, for Petitioner.

V. Venkataseshayya, for Respondent.

Tata E. & L. Co., Ltd. v. *State of Bihar*, A.I.R. 1965 S.C. 40, referred.

V.S. ——— *Petition allowed and remanded.*

Meclec Nutriments & Pharmaceuticals Ltd. *v.* State of Madras. W.P. No. 1846 of 1965.

Kailasam, J.
7th Ferbuary, 1966.

Land Acquistion Act (I of 1894), *sections* 9, 17—*Notice to interested persons whom the Collector subsequently comes to know—Desirability—Absence of notice, proceedings not vitiated—Urgency and public purpose—Subjective satisfaction of Government—Question cannot be gone into writ proceedings—Land registered as punja—No evidence that land become unfit for cultivation at the time of acquisition—Land acquired forming part of land acquire for a factory—If arable land.*

Though it is desirabale to give notice under section 9 to the other interested persons whom the Collector subsequently comes to know, it cannot be said that absence of any such notice could invalidate the proceedings.

The question of urgency and the requirement for a public purpose are matters of subjective satisfaction of the Government and it cannot be gone into in writ proceedings.

Section 17 is applicable only to waste and arable lands. Where the land in question is registered as punja lands and where there is nothing to indicate that the land become unfit for tillage at the time of acquisition, the mere fact that the land in question formed part of an extent of land which was acquired for a factory would not have the effect of altering the nature of land.

V. Vedantachari, for Petitioner.

K. S. Bakthavastsalam, for Additional Government Pleader.

V.S. ——— *Petition dismissed.*

[MADRAS.]

Sadasivam, J.
10*th December*, 1965.

Komaraswami *v.* State.
Cr.R.C. No. 164 of 1965.
Cr.R.P. No. 158 of 1965.

Criminal Procedure Code (*V of* 1898), *section* 237 *and Penal Code* (*XLV of* 1860), *sections* 285, 435—*Accused charged with one offence, conviction of another—Charged with offence of mischief by fire with intent to cause damage—Conviction for offence of negligent conduct with respect to fire—Sustainability—Common intention.*

From a comparison of the ingredients of the offences under sections 435 and 285 of the Penal Code, it is clear that the *actus reas* for the offence under section 285 would be established in every case where the *actus reas* for the offence under section 435 is made out. But the *mens rea* for the two offences are different. There could be a conviction under section 285 of the Penal Code though the accused were charged only under section 435 of the Penal Code, having regard to the provisions contained in section 237 of Criminal Procedure Code. If prejudice is likely to be caused by such a conviction, there should be a retrial.

The first petitioner, the father of the second petitioner, was merely present like the other two accused who were acquitted by the trial Court and who were charged for mischief by invoking section 34 of the Penal Code. Even section 34 of the Penal Code cannot be invoked in a case falling under section 285 of Penal Code, as there can be no question of common intention in such a case.

K. Ramaswami, for Petitioners.

K. A. Panchapakesan, for Public Prosecutor.

V.S.

Ordered accordingly.

[MADRAS.]

Venkatadri, J.
16*th December*, 1965.

General Assurance Society, Ltd., Madras *v.*
N. A. Mohammed Hussain.
A.A.O. No. 175 of 1964.

Motor Vehicles Act (*IV of* 1939), *section* 110-*A—Claims Tribunal—Application for compensation—Claimant travelling in employer's car, insured—Sustaining injury in an accident —Liability of the nsurance company—Defences open to insurance company—Award of compensation—No right to question.*

If the employee is injured in an accident arising out of his employment under the employer, the Insurance Company is liable to pay compensation not only to the owner of the vehicle for the loss or damage but also pay compensation to the injured party who will be entitled to get compensation under the Motor Vehicles Act.

Section 95 of the Act specifically lays down that in order to comply with the requirements of chapter relating to insurance of motor vehicles against third parties, the policy of insurance must be a policy which should comply with the requirements of the Act. Therefore no useful purpose is served by inserting in the policy a condition that they are not liable to pay to persons employed who would be entitled to get compensation under the Workmen's Compensation Act.

The Insurance Company cannot raise any defences other than those laid down in section 96 (2) of the Act and beyond that they cannot question the award of compensation.

N. C. Raghavachari and *V. C. Rangadorai*, for Appellant.

A. Dorairaj for *K. Subramaniam* and *N. Sankaran*, for Respondent.

V. S.

Appeal dismissed.

[MADRAS.]
Sadasivam, J.
1*st February*, 1966.

R. Sivanesam *v.* K. Subbiah.
Crl.R.C. No. 1608 of 1965
(Crl.R.P. No. 1582 of 1965)

Criminal Procedure Code (*V of* 1898), *sections* 202, 203—*Complaint to Magistrate—Dismissal on the evidence of complainant and his witnesses—Scope of assessment of evidence—Sufficient grounds—Existence of.*

The Magistrate should assess the evidence at every stage when he has to pass an order, though the nature of the assessment should necessarily vary on account of the presence or absence of the accused and other circumstances. One should take note of the averments made in the complaint and the evidence adduced by the complainant and his witnesses in the enquiry under section 201 of the Code. The evidence of the complainant and his witnesses are not tested by cross-examination at that stage. But the evidence can be certainly assessed in the sense whether there are material contradictions or improbabilities in order to find out whether the case is a true one or not. It is the duty of the Magistrate to discuss and assess the evidence of the witnesses examined by him under section 202 of the Code and he will be failing to exercise jurisdiction if he passes an order without such assessment of evidence.

The order of the Magistrate dismissing the complaint on the basis of material discrepancies between the evidence of the complainant and his witnesses and non-corroboration of the averments in the complaint was held to be correct.

M. K. Anandar, for Petitioner.

Fyzee Mohamood, for Respondent.

K. A. Panchapagesan for Public Prosecutor, for State.

V. S.

Petition dismissed.

[SUPREME COURT].

P. B. Gajendragadkar, C.J., K.N. Wanchoo, M. Hidayatullah, V. Ramaswami and *P. Satyanarayana Raju, JJ.*
7th, February, 1966

The General Assurance Society Ltd. *v.* Chandmull Jain and anothers·
C.A. No. 886 of 1963.

Insurance Company—Proposals, letters of acceptance, cover notes and policies nature and interpretation of—Cover notes if to accompany letters of acceptance—Reference therein to conditions in policies—If effective.

Contract of Insurance—Essentials—Condition in policy giving power for cancellation at will—Mutual—Binding on parties—Power of cancellation to be exercised before commencement of risk.

The respondents submitted proposals to the appellants with a view to insuring certain houses in Dhulian for Rs. 51,000 and 65,000 in respect of 2 holdings against fire, and including loss or damage by cyclone, flood and/or change of course of the river Ganges, erosion, landslide and subsidence. They were accepted by two letters dated 3rd June, 1950, which stated that, in accordance with the proposals the assured was held covered under cover notes enclosed therewith. There is a dispute whether they were so enclosed. It appears from the copies of the interim cover notes filed at the trial by the appellants that they bear the date 5th June, 1950. The copies filed contain a clause that the insurance against damages was for one year and subject to the terms, of the proposal and to the usual conditions of the policies of the appellant society and limited to a period of 30 days or the dates of issue of policies or if the risk be declined by the notification of such declaration.

Premia were paid on 7th June, but as no policies were received the respondents wrote a letter on 1st July, asking for the policies or for extending the cover notes. It was not done.

On 6th July the appellants sent letters cancelling the risk. The respondents wrote back that they could not do so as erosion had already commenced. The appellants pointed to Condition 10 of the Fire Policy of the Company and asserted their right to so terminate at the option of the society which the respondent countered by saying that it applied only to a Fire risk and not to others.

The houses were washed away on 13th and 15th August. The suit filed by the respondents was dismissed but was decreed in appeal to the extent of Rs. 1,10,000; the High Court certified the case as fit for appeal and this appeal to the Supreme Court has been filed by the company.

Held, the cover notes could have been sent later without impairing the effect of the reference to them in the letters of acceptance. They were an 'integral' part of the acceptances of the proposals and have to be read together.

A cover note is a temporary and limited agreement. It may be self-contained or it may incorporate by reference the terms and conditions of the future policy and then it need not contain the terms and conditions but may merely refer to a particular standard policy. The incorporation of the terms and conditions of the policy may also arise from a combination of references in two or more documents passing between the parties.

Documents like the proposal, cover note and the policy are commercial documents and to interpret them commercial habits and practice cannot altogether be ignored. During the time the cover note operates the relations of the parties are governed by its terms and conditions if any, but more usually by the terms and conditions of the policy bargained for and to be issued. In that case the terms of the policy are incipient, but after the period of the temporary cover, the relations are governed only by the terms and condition of the policy unless insurance is declined in the meantime. Even where there is delay in issuing the policy the relations would be governed by the future policy if the cover notes give sufficient indication that it would be so.

In interpreting documents relating to a contract of insurance the duty of a Court is to interpret the words in which the contract is expressed by the parties, because it is not for the Court to make a new contract, however reasonable, if the parties have not made it themselves. Looking at the proposals, the letters of acceptance and the cover notes, it is clear that a contract of insurance under the standard policy for fire and extended to cover flood, cyclone etc., had come into being. The four essentials of a contract of insurance are (i) the definition of risk, (ii) the duration of the risk, (iii) the amount of premium and (iv) the amount of damages. But the policy issued, besides containing these essentials, lays down and insures the rights of parties and each side has also obligations which are also defined. Even if the letter of acceptance went beyond the cover notes in the matter of duration, the terms and conditions of the proposed policy would govern the case because where contract of insuring property is complete, it is immaterial whether the policy is actually delivered after the loss and for the same reason the rights of parties are governed by the policy to be, between acceptance and delivery of policy. Even if no terms are specified the terms contained in a policy ordinarily issued in such cases would apply. There is ample authority for this proposition.

The insurance policy does not add to the contract ; the incipient terms and conditions of the contract later emerge in the policy and the terms and conditions then become express.

In the instant case, the letters of acceptance expressly mentioned the cover notes and the cover notes expressly mentioned the policy; the terms and conditions of the usual policy (Fire policies with added risks) accordingly governed the parties and made Condition 10 applicable.

The argument that the condition could not be operative between the parties till the policy was signed and delivered to the assured and as it never happened the cancellation was improper and not at all operative cannot be accepted. The assured cannot sustain the suit except by basing it on the policy, and in the plaint the policy was invoked.

Condition 10 cannot be taken exception to as being not an usual term where it gives a right to terminate the policy at will to the company. (vide *The Central Bank of India* v. *Hartford Fire Insurance Co., Ltd.* (1965) 1 Comp.L.J. 226 : (1965) 1 S.C.J. 498. It gives mutual rights to the parties to cancel the policy at any time and is sound in principle.

Cancellation is reasonably possible before the liability under the policy has commenced or has become inevitable and it is a question of fact in each case whether it is legitimate or otherwise.

In the face of the reports as to the state of floods in the Ganges there is no evidence to establish that at the time of cancellation the insured houses were in such danger and the loss has commenced or become inevitable.

C. B. Agarwala, Senior Advocate (*B. M. Agarwala* and *I. N. Shroff*, Advocates, with him), for Appellants.

Niren De, Additional Solicitor-General of India (*G. L. Sanghi* and *Nirmal Kumar Ghoshal*, Advocates, and *J. B. Dadachanji*, *O. C. Mathur* and *Ravinder Narain*, Advocates of *M/s. J. B. Dadachanji & Co.*, with him), for Respondentts.

K.G.S. *Appeal allowed. Suit dismissed.*

Manohar Pershasd, C.J. and
Mohamed Mirza, J.
23*rd February*, 1966.

Sardar Amolok Singh *v.*
Sriram Sharma.
Writ Appeal No. 40 of 1964.

Hyderabad District Municipalities Act (*XVIII of* 1956), *rule* 8 (2) *of the Rules framed under the Act—Scope—Two nominations signed by single voter—Both cannot be rejected—Nomination paper signed earlier alone is valid.*

Held, A reading of rule 8 (2) would show that a voter in the constituency can subscribe to as many nomination papers as there are seats to be filled. In the instant case there is only one seat to be filled. A voter can sign a nomination paper and no more. He could not under rule 8 (2) subscribe to more than one nomination paper as far as this constituency is concerned. He was prohibited from subscribing to the second nomination paper. The subsequent nomination was invalid and the nomination of the first respondent was valid.

Burgoyne and others v. *Collins and others*, L.R. (1882) 8 Q.B.D. 450 ; *S. Bhagavantha Reddy* v. *The Revenue Divisional Officer, Guntur*, (1963) 1 An.W.R. 54, followed.

Triyambak Rao Deskmukh, for Appellant.

Y. Suryanarayana, for Respondent No. 1.

D. V. Sastry, for Respondents Nos. 2 and 3.

G.S.M. *Appeal dismissed.*

Sharfuddin Ahmed and
Venkatesam, JJ.
8*th April*, 1966.

Subba Rao *v.* State of A.P.
C.M.P. No. 2131 of 1965.

Defence of India Rules, 1962, *rule* 30 (1)—*Order of detention of State Government under rule* 30 (1)—*Challenge on grounds of* mala fides—*Plea of* mala fides *should be definite and not vague.*

It is well-settled that an order of detention can only be challenged on the ground of malice and the Government is not bound to disclose the details of the material on which the satisfaction of the detaining authority was obtained.

A plea of such a nature is to be made by proper pleading at the initial stage and should not be vague and indefinite.

Makhan Singh v. *State of Punjab*, A.I.R. 1964 S.C. 381; *Moturn Hanumantha Rao* v. *Government of A. P.*, (1966) 1 An.W.R. 116, Rel. on.

In the instant case the petitioner has not been able to make out a case of *mala fides* against the orders of the Government.

Petitioner in Person

Advocate General on behalf of State.

G.S.M. *Petition dismissed.*

Manohar Pershad, C.J. and *Sharfuddin Ahmed, J.*
11*th April*, 1966.

Pedda Ella Ram Kishtiah *v.* Manne Pochiah.
A.A.A.O. No. 80 of 1960.

Hyderabad Tenancy and Agricultural Lands Act (*XXI of* 1950), *section* 47—*Attachment of Agricultural lands in execution of decrees—Sanction of Tahsildar under section* 47 *not necessary—Sanction is necessary for effecting Court-sale.*

No sanction of the Tahsildar under section 47 of the Hyderabad Tenancy and Agricultural Lands Act is required for attachment of immovable property in execution of a decree. Sanction would no doubt be necessary for effecting a Court sale.

Ollala Ambiah v. *Avadhamula Mallamma*, (1964) 1 AnW.R. 319, observations contra overruled.

K. A. Mukhtadir, for Appellant.

B. P. Jeevan Reddy, for Respondent.

G.S.M. *Reference answered accordingly.*

Gopal Rao Ekbote, J.
13*th April*, 1966.

Abdul Nabi *v.* Gulam Murthuza Khan.
Crl.R.C. No. 356 of 1965.

Criminal Procedure Code (*V of* 1898), *sections* 200 *to* 203 *and* 253—*Magistrate took cognisance of the offence and issued summons to accused under section* 203—*Accused appeared and raised objection stating that the complaint does not disclose the offence alleged—Magistrate without examining complainant, upheld objection of accused—Dismissed the complaint and discharged the accused—Order of Magistrate without recording any evidence under section* 252 *is bad.*

Held, Sub-section (1) of section 253 expressly refers to the duty of the Magistrate to take all the evidence referred to in section 252, and it is in juxta position of this duty that section 252 empowers the Magistrate to discharge the accused at any previous stage of the case. It can only mean that after the stage of section 203 is passed, but some evidence is recorded under section 252 and before all the evidence referred to in section 252 is recorded the Magistrate can discharge the accused. Any other interpretation would be derogatory to the scheme of the act and is likely to create anamolous situation. Therefore after the stage of section 252 is passed, the Magistrate, can discharge the accused only in a case where he records either the statement of the complainant in the presence of the accused, or record some evidence but has not completed the recording of all the evidence as may be produced in support of the prosecution. He cannot dismiss the complaint and discharge the accused before recording any evidence whatsoever under section 252, Criminal Procedure Code. That will not only militate against the natural conclusion which must follow from the reading of Sections 203 and 204 but would be contrary to sections 252 and 253, Criminal Procedure Code, themselves.

H. S. Gururajrao, for Petitioner.

M. A. Khader, for Ist Respondent.

G.S.M. *Petition dismissed.*

[FULL BENCH]

Veeraswami,
Kunhammed Kutty and
Natesan, *JJ*.
18*th March*, 1966.

Sheik Ali *v.* Sheik Mohamed.
A.A.O.No. 286 of 1960.

Civil Procedure Code (*V of* 1908), *section* 44-*A and Limitation Act* (*IX of* 1908), *Article* 181—*Execution of a decree of a Superior Court of a reciprocating territory—Limitation—"As if it had been passed by the District Court"—Meaning—Section* 44-*A* (1) *of the Code, has nothing to do with the law of limitation—Jurisdiction of the District Court—Arises on the filing of the certified copy of the foreign decree—Filing of non-satisfaction certificate—Merely procedural requirement—Filing of a certified copy of the foreign decree—No period of limitation prescribed—Three years under Article* 181 *of the Limitation Act applies for execution of foreign decree—Accrual of the right to apply from the date of filing of the certified copy of the foreign decree.*

Section 44-A (1) of the Code of Civil Procedure is confined to the powers and manner of execution of foreign decrees and has nothing to do with the law of limitation. The fiction created by the sub-section by the words " as if it has been passed by the District Court ", goes no further and is not for all purposes, but is designed to attract and apply to execution of foreign judgments by the District Court its own powers of execution and the manner of it in relation to its decree without reference to limitation. The contrary view expressed in *Uthamram* v. *Abdul Kassim Co.*, (1963) II M.L.J. 412, is not correct. The law of limitation as contained in the Limitation Act, as a procedural law and as *lex fori* will, however, apply, independently of section 44-A, to execution in India of a foreign judgment of a Superior Court in a reciprocating territory.

The jurisdiction of a District Court in this country to execute a foreign judgment arises from and is exercisable by the filing of a certified copy of the foreign decree or judgment. It is only thereafter, and never until then the procedural laws as to *lex fori* will be attracted to execution. The Limitation Act can possibly apply to such execution only after filing a certified copy of the foreign decree or judgment as required by section 44-A (1). Section 44-A (1) does not require the filing of a non-satisfaction certificate as a condition for the District Court to assume jurisdiction. The requirement relates merely to procedure. The contrary view held in *Uthamram* v. *Abdul Kassim Co.*, (1963) II M.L.J. 412, is not correct.

There is no limitation for filing a certified copy of a foreign decree or judgment under section 44-A (1) of the Code.

Article 181 of the Limitation Act is the only Article that applies to execution of a foreign judgment under section 44-A (1). The language in column 1 for this Article is not related to any particular Court. The Article prescribes a period of three years and the limitation commences when the right to apply accrues. The right to apply under Order 21, rule 11 of the Code for execution of a foreign judgment accrues on and from the date of filing of a certified copy of foreign decree under section 44-A (1).

Article 183 is applicable only to execution of decrees of a Court established by Royal Charter in this country. Article 182 is not applicable because that Article is confined to execution of a decree or order of any civil Court in this country.

K. Rajah Iyer, for Appellant.

V. K. Thiruvenkatachari, for Respondent.

V.S.

Appeal dismissed.

Venkatadri, J.
20*th June*, 1966.

The British Machinery Supplies *v.* Devaraj.
C.R.P.No.1142 of 1963.

Hire Purchase—Hirer in possession and use of the goods—Pledge of the goods by the hirer—Default in payment of instalments by hirer under the agreement—Option to terminate agreement not exercised by the owner—Rights of parties—Owner not entitled to sue pledgee for recovery of the goods.

In all hire purchase agreements, there is a dual nature, where a hirer can transfer the benefit of the hiring alone while retaining the option to purchase ; or he can assign the option alone, remaining in possession of the goods until the hire purchase price is paid ; or he can assign his entire rights under the agreement, in which case the assignee becomes entitled both to the use of the goods and to the option to purchase.

A prohibition against the assignment must be so framed as to cover both the assignment of the benefit of hiring and the transfer of the option to purchase.

A condition in the agreement that the hirer shall not sell the goods does not prohibit the hirer from assigning the benefit of hiring. The pledge by the hirer would not constitute a breach of the hire purchase agreement, in the absence of a provision in the agreement expressly prohibiting the hirer from pledging or parting with possession of the goods.

Once there was default in the payment of the instalments the owner could have terminated the agreement, but he has not exercised that right. At the time of the pledge, the hirer has the legal possession of the goods and had a right to use the same. In the circumstances, the hirer had a right or interest in the goods when he pledged the goods.

The owner is not entitled to sue the pledgee to recover the goods. He can sue the hirer for damages and for the balance of the price.

R. Rangachari, for Petitioner.

Y. Venkatasubramanian, for 2nd Respondent.

K. Venkateswara Rao, Amicus Curiae, on behalf of 3rd Respondent.

V.S. ——— *Petition dismissed.*

Ramakrishnan, J.
8*th July*, 1966.

M.P. Govindaraj, *In re.*
Crl.R.C.No. 1725 of 1964.
Crl.R.P.No. 1696 of 1964.

Madras Prohibition Act (*X of* 1937), *section* 3 (20) *and Madras Denatured Spirit Methyl Alcohol and Varnish* (*French Polish*) *Rules*, 1959, *Rules* 6 (ii) *and* 11—*French Polish—Tansporting from Karaikal* (*Union Territory*) *to Bangalore under a permit—Passing through the intervening State of Madras—Conviction for transporting in Madras State—Not sustainable.*

Words and Phrases—Transporting.

The case of the prosecution was that the petitioner was taking a quantity of French Polish from Karaikal under the strength of a gate pass issued by the authorities at Karaikal to Bangalore under a State permit issued by the Mysore Excise Department. He was charged with the offence of transporting under rule 6 (*ii*) of the Madras French Polish Rules in the intervening State of Madras.

Held, the accused cannot be convicted for transporting within the meaning of rule 6 (*ii*) of the Rules. Transport means transport from the starting point to the ultimate destination. Merely passing through a place in the course of journey does not amount to transporting to that place. Many absurd situations will arise, if the act of transport is construed as involving a number of minor transports within any two points between the termini, comprising of the starting point and the destination.

Emperor v. *Dagadu Shetiba*, 39 B.L.R. 1062, referred.

P. R. Gokulakrishnan, for Petitioner.

S. R. Srinivasan, for Public Prosecutor.

V.S. ——— *Petition allowed.*

Kumarayya and
Ananthanarayana Ayyar, JJ.
5*th July*, 1966.

Dr. M. N. Dasanna *v.*
Government of A. P.
W.P. No. 468 of 1965.

Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 (*II of* 1960) *as amended by the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal). Amendment Act*, 1965 (*XXVII of* 1965), *section* 6 (1) *and Rule* 7 (6) *of the Rules framed thereunder—Scope—Evidence recorded by one member—Submissions of report by succeeding number of Tribunal—Such report valid under section* 6 (1) *and sub-rule* (6) *of Rule* 7*—Proceedings are valid.*

Constitution of India (1950), *Art.* 311*—Omission in the show cause notice of the word "provisional"—Show cause notice not invalid.*

Sub-rule 6 of Rule 7 of the Rules framed under the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 (II of 1960) expressly lays down that the succeeding officer may deal with any evidence taken down by his predecessor and that he may proceed with the enquiry from the stage at which his predecessor had left it. The words of Rule 7, sub-rule (6) and section 6, sub-section (1) are sufficient to take away from a charged officer the ordinary right *i.e.*, that his case should be decided by a judge who has heard the whole of it.

Unreported judgment in W.P. No. 974 of 1962 dated 8th October, 1963, relied on.

(1951) 1 M.L.J. 549, distinguished.

The very fact that the show cause notice calls for an explanation and gives an opportunity to the charged officer to explain why he should not be dismissed from the service, is sufficient to indicate that the Government came to only a provisional conclusion though the word " provisional " is not expressly mentioned in the Government Memo.

A.I.R. 1958 A.P. 24, followed.

Alladi Kaeyopuswarey, Venkataramayya and *Sudhakara Rao*, for Petitioner.

Second Government Pleader (*N. V. B. Sankara Rao*), for Respondents.

G.S.M. ——— *Petition dismissed.*

Basi Reddy, Gopalakrishnan Nair, and
Venkatesam, JJ.
1*st April*, 1966.

Mattapalli Venkateratnam *v.*
Mattapali Challamayya.
Appeal No. 212 of 1962.

Arbitration Act (*X of* 1940), *section* 17 *and Registration Act, section* 17 (1) (*b*) *and* 49*—Unregistered award of Arbitrators passed after the Act—Award deals with immovable property of the value of more than Rs.* 100*—Compulsorily registrable under section* 17 (1) (*b*) *of Registration Act—Section* 49 *of Registration Act prohibits receipt of such award in evidence for making the award a rule of Court under section* 17 *of Arbitration Act.*

Arbitration Act (*X of* 1940), *section* 17 *and Registration Act, section* 17 (1) (*b*) *and* 49 *—Unregistered award creating charge on immovable properties—Section* 49 *of Registration Act prohibits receipt of such award in evidence—Award creating charge on immovable properties—Compulsorily registerable under section* 17 (1) (*b*) *of Registration Act—Invalid portion of award can be excluded—Rest of award could be enforced.*

Held, Rights and liabilities of the parties are created by the award and not by the decree. The Court in passing a decree in accordance with the award under section 17 of the Act only sets its seal of approval to the award. This is very different from saying that it is the decree that creates rights and cast obligations on the parties. It does not appear to be correct to think that it is the decree of the Court that confers rights and imposes obligations on the parties. In truth and substance, it is the award that does so. The requirement that the award shall be made a rule of the Court is only with a view to its enforceability. This is far different from saying

that the decree passed by the Court confers rights or imposes obligations apart from the award. The contention that until an award is made a rule of the Court the award is " a mere waste paper " or a nullity cannot be accepted as correct.

(1963) 1 An.W.R. 45 : A.I.R. 1963 A.P. 193, affirmed.

A.I.R. 1958 Patna 252, dissented.

The crucial document which creates the rights and liabilities between the parties is the award and the Court can found a decree upon it under section 17 of the Act only if it is qualified under the provisions of the Registration Act for being received in evidence and acted upon by the Court. If it is not so qualified in the light of sections 17 and 49 of the Registration Act, it cannot be made a rule of the Court under section 17 of the Act. The requirements under the Registration Act and also the requirements under the Arbitration Act have both to be complied with before an award could become enforceable. The registration of the award is an earlier step and the passing of a decree on the award under section 17 of the Act a later step in rendering the award enforceable. Section 49 of the Registration Act is mandatory and cannot be by-passed in proceedings under section 17 of the Act. It is only when an award is accepted in evidence that a judgment can be pronounced and a decree passed in accordance with it under section 17 of the Act. But to enable an award falling under section 17 (1) (*b*) of the Registration Act to be received in evidence, it should be registered. Otherwise, the prohibition enacted in section 49 of the Registration Act will come into play and the award cannot be received as evidence and acted upon by the Court. The contention for the appellants that in no event can an award made without the intervention of Court, after the coming into force of the Arbitration Act, 1940, be required to be registered under section 17 (1) (*b*) of the Registration Act cannot be accepted. On the contrary, an award which embodies a transaction contemplated by section 17 (1) (*b*) of the Registration Act is compulsorily registrable, and that if it is not registered it cannot be received in evidence for the purpose of making the award a rule of the Court under section 17 of the Arbitration Act, 1940.

(1960) S.C.J 969: (1960) 2 S.C.R. 810: A.I.R. 1960 S.C. 629; (1961) 3 S.C.R. 792: (1962) S.C.J. 597: A.I.R. 1961 S.C. 1077 at 1084, followed.

A.I.R. 1955 Andh. Pra. 22 ; A.I.R. 1945 Cal. 19 ; (1946) 2 M.L.J. 345 ; A.I.R. 1947 Mad. 168 ; (1950) 5 D.L.R. (All.) 250 ; A.I.R. 1952 Pun. 146, relied on.

On the second point, their Lordships, *Held :—*

As the award which purports to create a charge is not registered, it cannot affect the properties sought to be charged or be received as evidence of a charge over the properties. In other words, the charge provision of the award cannot be looked at in view of the terms of section 49 of the Registration Act. It is as if that provision does not at all appear in the award so far as the Court is concerned. If the invalid portion of the award is separable from the rest of the award, there can be no objection to the invalid portion being eschewed and the rest being accepted and acted upon. Although the portion of the award relating to the creation of a charge is invalid for want of registration, the rest of the award is good and valid.

Case law reviewed.

D. Narasaraju and *Kameswar Rao*, for Appellants.

V. Parthasarathi, *K. Mangachari*, and *P. Rajagopala Chari*, for Respondents.

G.S.M.

———

Appeal allowed and Remanded. Question referred to Full Bench is answered in affirmative.

Anantanarayanan, C. J.
and *Ramakrishnan, J*
6*th July*, 1966.

T. N. Rangaswami *v.*
K. K. Rangaswami.
W.A. No. 37 of 1966.

Madras Panchayat Act (*XXXV of* 1958)—*Election of President of panchayat—Member signatory to the proceedings of the meeting for election, recording casting of lots on account of a tie—Election petition by the member on the ground of invalidity of vote—No. estoppel—Intention of voter, to be manifest from the ballot paper—Rejection in case of doubt.*

The fact that the respondent was a signatory to the proceedings of the meeting for the election of the President of the Panchayat and which ended in a tie requiring the casting of lots, would not estop him from contending that a particular vote was invalid in his election petition.

The true intention of the voter must be manifest from the ballot paper. Where the choice of the voter had to be indicated by a round seal supplied, with a cross inside to be affixed against the name of the chosen candidate, and it was affixed on the line dividing the two cages, part of it on one cage of one candidate and part if it on the other cage belonging to another, the paper has to be rejected.

V. Thyagarajan, for Appellant.

N. Varadarajan, for 1st Respondent.

V.S.

Appeal dismissed

P. Kunhammad Kutty, J
18*th July*, 1966.

C. R. Neelakantan *v.*
C. Bakthavatsalam.
Appln. No. 1302 of 1966.
C. S. No. 54 of 1966,

Civil Procodure Code (*V of* 1908), *Section* 92, *Order* 1, *rule* 10,—*Societies Registration Act* (*XXI of* 1860)—*Public charities—Defencant in charge of an Annadhana Samajam—Suit against him for removal and other reliefs after obtaining sanction of Advocate-General—Application to implead Samajam, represented by the defendant as its Secretary—Samarajm, a necessary party—No alteration of character of suit by the addition—No further sanction of Advocate-General necessary—Suit against the Society registered under Act XXI of* 1860 *under section* 92 *of the Code.*

The suit was laid against the defendant who was in charge of the Annadhana Samajam, for his removal on the allegations of various acts of breach of trust and for other reliefs, under section 92 of the Code after obtaining the sanction of the Advocate General. By means of this application, the plaintiff sought to implead the Samajam as a defendant, represented by the defendant.

Held, the Samajam is a charitable trust registered under the Societies Registration Act of 1860 and section 6 of the Act prescribes the mode in which suits by or against such societies have to be brought. But there is no provision in the Act which would justify the inference that a suit filed by or against a Society is not governed by section 92 of the Code.

The defendant who is already on record without any description of his capacity, as an intermeddler with the affairs of the Samjam and against whom sanction has been granted by the Advocate-General is sought to be impleaded as representing the Samajam which is sought to be added as supplemental second defendant. The Samajam would be a necessary party to the suit for an effective adjudication of the disputes between the parties and such addition of the party does not alter the nature of the suit requiring the further sanction of the Advocate-General.

, for Plaintiff.

Ganapathisubramanian for Defendant.

V.S.

Application allowed.

M. Ananthanarayanan, C.J. C. A. Rajaram *v.* R. Anantram.
29*th July*, 1966. C.R.P. No. 343 of 1965.

Civil Procedure Code (*V of* 1908), *Order* 1, *rule* 10—*Suit for dissolution of partnership—Karta of Hindu undivided family, one of the partners—Son of the Karta—If a proper party to the suit to be impleaded.—No claims by son to any right or relief.*

The Court must primarily consider whether the presence of a party would advance the total and satisfactory adjudication of the *lis* or the subject-matter of controversy. If the presence of such a party would be essential or highly desirable in the interest of justice, the Court has a wide discretion to implead such a party.

The son of the karta-partner has to safeguard the interests of the family by seeing that the father did not compromise the suit to the disadvantage of the family or in such a manner as to whittle down the family assets. In this sense he is a proper party and his presence on record will not impede the suit in any way as no claim to a separate right or relief is made by the son.

The impleading of the son as a party does not mean that he can get any right adjudicated by a decree in the partnership suit, *inter se* between himself and his father.

A. Sundaram Iyer, for Petitioner.

M. R. Rajagopalachari and *A. Sundaresan*, for 1st Respondent.

K. Parasurama Iyer, for Respondents 2 to 4.

V.S. *Petition allowed.*

[SUPREME COURT.]

K. Subba Rao, C.J. and
J. M. Shelat, J.
22*nd August*, 1966.

Hasan Nurani Malak *v.*
Assistant Charity Commissioner,
Nagpur.
C.A. No. 498 of 1964.

Bombay Public Trusts Act (1950), *section* 19—*Madhya Pradesh Public Trust Act* (*XXX of* 1951), *sections* 5, 6, 7 *and* 8—*The Bombay Public Trust* (*Unification Amendment*) *Act*, 1959—*Definition of Public Trust under section* 2 (4) *of the M.P. Act—Bombay Societies Registration Act* (*VI of* 1960), *section* 86.

Sections 6 and 7 of M. P. Public Trust Act enjoin upon the Registrar to record his finding. Such a finding may either be that the trust is a public trust or it is not. Section 7 (1) enjoins upon him to cause entries to be made in the register "in accordance witn the findings recorded by him under section 6", and he is to publish the entries when made in the register. The register prescribed no doubt is a register of public trusts. If the finding of the Registrar is that a particular trust is not a public trust, does he not have to make an entry of nis finding in the register or has he to make an entry in that register only when his finding is a positive one tnat the trust is a public trust? It will be noticed that there is nothing in section 7 (1) to show that he is required to make an entry only if the finding is in the affirmative. On the other hand sub-section (1) of section 7 expressly provides that he shall cause entries to be made in accordance with the findings recorded by him under section 6. Section 6 shows that he nas to record his findings and the reasons therefor whatever the findings are, whether in the affirmative or in the negative. Since entries under section 7 (1) are to be made in accordance with such findings, either positive or negative, it follows that entries have to be made irrespective of whether the trust is found to be a public trust or not. To say that he is required to make an entry of a finding only if the finding is that the trust is a public trust would be contrary to the express language of sections 6 and 7 and would unnecessarily curtail the language and the scope of the two sections. This construction is also supported by section 8. Under that section, though it is the entry made under section 7 wnich has been given finality a right of suit is conferred on both the working trustee and all persons having interest in the trust or any property belonging to it and who is aggrieved 'by any finding.'

The High Court was, therefore, in error when it held that the Registrar was not obliged to make the entry as his finding was in the negative. In our view, reading sections 5, 6, 7 and 8 of the M.P. Act it is clear that the Registrar is enjoined upon to make an entry in the register of public trusts irrespective of whether his finding is in the affirmative or in the negative. For the entry he has to make is the entry "in accordance with his finding" whatever that finding is.

The inquiry held by the Registrar under the M.P. Act was indisputably "a thing duly done" under that Act. The inquiry and its result having been saved by section 86 (3) (*a*) they continue to be governed by the M.P. Act in spite of its ceasing to apply in Vidarbha. As we have already held it was obligatory on the Registrar to have made an entry of his finding in the register of public trusts, maintained by him under that Act though the finding was that the trust was not a public trust.

That being the position, the inquiry is saved by sub-clause (*a*) of section 86 (3) and it is still pending and is governed by the M.P. Act. In the result a fresh inquiry under the Bombay Act while the proceeding under the M.P. Act is still pending was not competent and the Assistant Charity Commissioner was precluded from entertaining it.

S. T. Desai, Senior Advocate with *M/s. J. B. Dadachanji & Co.*, Advocates, for Appellant.

B. L. R. Aiyengar, Senior Advocate with *B. R. G. K. Achar*, Advocate, for Respondent No. 1.

N. C. Chatterjee, Senior Advocate with *Shankar Anand*, *Asghar Ali*, and *Ganpat Rai*, for Respondents Nos. 2 to 5.

G.R. ——— *Appeal allowed.*

M. Anantanarayanan, C.J.
and *P. Ramakrishnan, J.*
6*th July*, 1966.

T. N. Rangaswami *v.*
K. K. Rangaswami.
W.A. No. 37 of 1966.

Madras Panchayats Act (*XXXV of* 1958)—*Election of President of Panchayat—Member signatory to the proceedings of the meeting for election, recording casting of a lots on account of a tie—Election petition by the member on the ground of invalidity of a vote—No estoppel—Intention of voter, to be manifest from the ballot paper—Rejection in case of doubt.*

The fact that the respondent was a signatory to the proceedings of the meeting for the election of the President of the Panchayat and which ended in a tie requiri the casting of lots, would not estop him from contending in his election petiti that a particular vote was invalid.

The true intention of the voter must be manifest from the ballot paper. Wh the choice of the voter had to be indicated by a round seal supplied, with a cr inside to be affixed against the name of the chosen candidate, and it was affix on the line dividing the two cages, part of it on one cage of one candidate and p of it on the other cage belonging to another, the paper has to be rejected.

V. Thyagarajan, for Appellant.

N. Varadarajan, for 1st Respondent.

V.S. ——— *Appeal dismiss*

P. Kunhammad Kutty, J.
18*th July*, 1966.

C. R. Neelakantan
C. Bakthavatsala
Appln. No. 1302 of 196
C.S. No. 54 of 196

Civil Procedure Code (*V of* 1908), *section* 92, *Order* 1, *rule* 10—*Societies Registrat Act* (*XXI of* 1860)—*Public charities—Defendant in charge of an Annadhana Samajam Suit against him for removal and other reliefs after obtaining sanction of Advocate-General Application to implead Samajam, represented by the defendant as its Secretary—Samaja a necessary party—No alteration of character of suit by the addition—No further sanction Advocate-General necessary—Suit against the Society registered under Act XXI of* 18 *under section* 92 *of the Code.*

The suit was laid against the defendant who was in charge of the Annadha Samajam, for his removal on the allegations of various acts of breach of trust a for other reliefs, under section 92 of the Code after obtaining the sanction of the Advocate-General. By means of this application, the plaintiff sought to implead the Samajam as a defendant, represented by the defendant.

Held, the Samajam is a charitable trust registered under the Societies Registration Act of 1860 and section 6 of the Act prescribes the mode in which suits by or against such societies have to be brought. But there is no provision in the Act which would justify the inference that a suit filed by or against a Society is not governed by section 92 of the Code.

The defendant who is already on record without any description of his capacity, as an intermeddler with the affairs of the Samajam and against whom sanction has been granted by the Advocate-General is sought to be impleaded as representing the Samajam which is sought to be added as supplemental second defendant. The Samajam would be a necessary party to the suit for an effective adjudication of the

disputes between the parties and such addition of the party does not alter the nature of the suit requiring the further sanction of the Advocate-General.

K. Srinivasa Rao, for Plaintiff.

Ganapathisubramanian, for Defendant.

V.S. ——— *Application allowed.*

P. S. Kailasam, J.
26*th July*, 1966.

Raju Naidu *v.*
Changam Co-operative Supervising Union, Ltd.
W.P. No. 152 of 1965.

Madras Co-operative Societies Act (*LIII of* 1961), *sections* 73 *and* 119 *and Madras Co-operative Societies Rules* (1963), *rule* 29 (5) (iii)—*Election of members of Committee—President and Secretary of the Society candidates for the election—Secretary receiving the nomination papers of another candidate in pursuance of authority—Contravention of the statutory rule framed under the Act—Capable of correction by issue of writ quashing election proceedings—Error apparent on the face of record—Existence of alternative remedy, no bar.*

Rule 29 (5) (iii) of the Rules would be contravened in a case where the President and the Secretary were candidates for election and the Committee of the Society nominated the Secretary as the person to receive the nomination papers and the Secretary received the nomination papers. This would entail quashing of the election proceedings.

In the absence of a specific provision, the deletion of the proviso to rule 29 (2) cannot be deemed to take along with it that part of sub-rule (5) (iii) which prohibits the President from receiving the nomination papers.

Where the breach of a statutory rule is apparent on the face of the record a writ will issue in spite of the existence of an alternative remedy provided under section 73 of the Act.

The Government have framed the Madras Co-operative Societies Rules, 1963 in pursuance of the rule-making powers conferred under section 119 of the Act. The rules that are contravened are statutory rules and the authorities who are entrusted with the conduct of election have a duty to conduct the election in the manner prescribed. Breach of any of the conditions laid down by the rules would be a breach of the Rules framed under the Act and would be enforceable by the High Court by issue of a wirt.

R. G. Rajan, for Petitioner.

V. V. Raghavan, for Respondents 2 to 8.

V.S. ——— *Petition allowed.*

M. Ananthanarayanan, C.J.
29*th July*, 1966.

G. A. Rajaram *v.* R. Anantram.
C.R.P. No. 343 of 1965.

Civil Procedure Code (*V of* 1908), *Order* 1, *rule* 10—*Suit for dissolution of partnership—Karta of Hindu undivided family, one of the partners—Son of the Karta—If a proper party to the suit to be impleaded.—No claims by son to any right or relief.*

The Court must primarily consider whether the presence of a party would advance the total and satisfactory adjudication of the *lis* or the subject-matter of controversy. If the presence of such a party would be essential or highly desirable in the interest of justice, the Court has a wide discretion to implead such a party.

The son of the karta-partner has to safeguard the interests of the family by seeing that the father did not compromise the suit to the disadvantage of the family or in such a manner as to whittle down the family assets. In this sense he is a proper party and his presence on record will not impede the suit in any way as no claim to a separate right or relief is made by the son.

The impleading of the son as a party does not mean that he can get any right adjudicated by a decree in the partnership suit, *inter se* between himself and his father.

A. Sundaram Iyer, for Petitioner.

M. R. Rajagopalachari and *A. Sundaresan*, for 1st Respondent.

K. Parasurama Iyer, for Respondents 2 to 4.

V.S. *Petition allowed.*

P. S. Kailasam, J.
16*th September*, 1966.

M. Murali Dharan *v.*
University of Madras.
W.P. No. 1845 of 1966.

University—Writ against—Whether maintainable—Breach of the laws of the University—Writ may issue—Action of the authorities as honest and reasonable men—Not liable to be questioned—Petitioner, a failed candidate—Seeking writ to quash the results and to direct valuation of marks again—Constitution of the Board of Examiners—Validity—Ordinance, Chapter 12, *Rule* 2 (*r*) (i).

It is clear from the authorities that the High Courts and the Supreme Court entertain writs against the proceedings of a University.

In writ proceedings the High Court cannot constitute itself into a Court of appeal from the authority against which the writ is sought. If the University authorities had acted honestly and as reasonable and responsible men confronted with the situation with which they were faced, the Court will not issue the writ.

It would have to be considered whether there had been any breach of the laws of the University and if there had been any breach, whether the provisions thus contravened were mandatory or directory, depending on the question whether the requirement is insisted on as a protection for safeguarding the right of liberty of the person or of property, which the action might involve.

The words ' shall have regard to ' and ' after consideration of the recommendations ' in Chapter 12, Rule 2 (*r*) (i) of the Ordinance, can only mean that the Syndicate should consider the recommendations and it would not have the effect of prohibiting the Syndicate from appointing any person who has not been recommended by the Board of Studies as Examiner.

The action of the University authorities in the instant case was held to be justified.

S. Chellaswami, for Petitioner.

V. K. Thiruvenkatachari for *C. N. S. Chengalvarayan*, for Respondent.

V.S. *Petition dismissed.*

[SUPREME COURT.]

V. Ramaswami, V. Bhargava and *Raghubar Dayal, JJ.*
6*th September*, 1966.

K. P. Raghavan *v.* M. H. Abbas.
Crl.A. No. 125 of 1966.

Penal Code (*XLV of* 1860), *section* 330—*Criminal Procedure Code* (*V of* 1898), *sections* 207-*A and* 209.

It will thus be seen that there was nothing in the prosecution or the defence case which made the prosecution case inherently improbable, and there could be no justification for the Magistrate to hold that no Court could reasonably come to a conclusion on this material that the prosecution case had been established. It is clear that in these circumstances, what the Magistrate did was to appropriate to himself the function of judging whether the prosecution evidence was to be believed or whether the defence evidence was to be believed in preference, and consequently the evidence of the prosecution witness who gave eye-witness account of the offence was unreliable. No doubt a Magistrate enquiring into a case under section 209, Criminal Procedure Code, is not to act as a mere Post Office, and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session ; but in arriving at that conclusion, it is not the function of an enquiring Magistrate to weigh the *pros* and *cons* of the prosecution and defence evidence and to discharge the accused merely because in his view the defence evidence was better than the prosecution evidence.

In the case before us, as we have already held above, there was direct evidence of prosecution witnesses to support the charge in the complaint and it could not be held that the witnesses who gave the evidence were such that there was no reasonable possibility of their being believed by any Court. Consequently, it is clear that the Magistrate had committed an error in discharging the appellants, and the Sessions Judge was right in ordering commitment of the appellants to the Court of Session for trial. His order was also rightly upheld by the High Court.

We are only concerned with the interpretation of section 209 and we have indicated above how the jurisdiction under that section should be exercised by a Magistrate.

A. S. R. Chari, Senior Advocate (*Sardar Bahadur*, Advocate, with him), for Appellants.

B. R. L. Iyengar, Senior Advocate (*A. V. V. Nair*, Advocate, with him), for Respondent No. 1.

V. A. Seyid Muhammad, Advocate-General for the State of Kerala (*M. R. Krishna Pillai*, Advocate, with him), for Respondent No. 2.

G.R. ———— *Appeal dismissed.*

[SUPREME COURT.]

M. Hidayatullah, S.M. Sikri and *Raghubar Dayal, JJ.*
10*th October*, 1966.

Mahadu Rupila Deore *v.* The State of Maharashtra.
Cr.A. No. 269 of 1964.

Penal Code (*XLV of* 1860), *section* 161 *and section* 5 (2) *of the Prevention of Corruption Act* (*II of* 1947)—*Presumption under section* 4 (1) *of the Prevention of Corruption Act.*

Really, the whole object of laying the trap in bribery cases, is to secure an independent witness with respect to the transaction of the demand and the giving of bribe. The result of Mudaliar's agreeing to the suggestion of Shantilal is that there is no independent evidence in corroboration of the statement of Shantilal. It may be that it is not necessary for the prosecution to lead corroborative evidence in cases where a presumption under section 4 (1) of the Act arises against the accused, but in cases where the accused leads evidence to rebut the presumption, the importance of corroborative evidence cannot be gainsaid. The Court has to weigh the probabilities of the case and to see whether the preponderance of the probabilities lies with the defence version or with the prosecution version irrespective of the presumption

which is sought to be rebutted by the accused person. When there is no evidence in corroboration of the statement of Shantilal it is difficult to say that his story is a probable story. In fact his desire not to have a panch present leads to the inference that he was afraid of the panch not supporting the version he would like to put forward. The advantage of this omission must go in favour of the appellant.

The High Court, curiously enough, did not deal with this aspect of the matter. It simply referred to it as a peculiarity by observing, after narrating the prosecution case.

"When considering the probabilities of the case, the recovery of the money is not of significance. What is of significance is in what connection the money was being paid and in that respect the statement of an independent witness would have been of value." The High Court refers to the contention on behalf of the appellant in this connection and brushes it aside by saying "This is besides the point."

Dealing so lightly with this important aspect of the case sufficiently vitiates the judgment of the High Court. It is also significant that the High Court has nowhere referred to the credibility of the complainant, a witness who has made some inconsistent statements and had a few convictions to his credit.

We are therefore of the view that the learned Special Judge had dealt with the matter fully and given adequate reasons for holding that the appellant's version was to be preferred to the prosecution case, and that the High Court was not justified in setting aside that view. The result is that the appeal is allowed and the order of the High Court is set aside. The appellant is acquitted of the offences under section 161, Indian Penal Code and section 5 (1) (*b*) read with section 5 (2) of the Act. Fine, if paid, to be refunded as the appellant is already on bail.

N. D. Karkhanis, M/s. Dadachanji & Co., Advocate, for Appellant.

O. P. Rana and *R. N. Sachthey*, Advocates, for Respondent.

G.R.

Appeal allowed.

Ramakrishnan, J.
15*th July*, 1966.

R. Gobalakichenane *v.* Saminathan.
S.A. (Crl.) No. 685 of 1965 (P).

Pondicherry Administration Act (*XLIX of* 1962), *section* 10—*High Court—Power of* Cassation—*Exercise against orders of* "non-lieu" *recorded by* chambre des mises *on accusation—Conditions—Heads of charges—Finding given by* chambre des mises—Parte civile—*Not to be permitted to attack* motifs *for the decision by way of* cassation.

The power which the High Court could exercise by way of *cassation* against orders of "*non-lieu*" recorded by the *chambre des mises* on accusation, are strictly limited and can be exercised only in the following cases : (1) If the Public Prosecutor has himself filed a petition for revision, (2) If the *parte civile* disputes the jurisdiction of the *chambre des mises* on accusation, (3) If the order has omitted to give a finding on a heading of charge, (4) If the order has declared that the complaint of the *partes civile* cannot be entertained and (5) Where the order of the *chambre des mises* on accustation does not fulfil the essential legal forms prescribed for making that order. These conditions have obviously to be taken disjunctively.

When the *chambre des mises* on accusation has given a finding on all the heads of charges, the *partes civile* cannot be permitted to attack the reasons (*motifs*) for the decision. Such a method of attack against the order of the *chambre* by way of *cassation* is not permitted under the French law and jurisprudence for the purpose of obtaining relief by way of *cassation.*

M. S. Venkatrama Iyer, V. Krishnan and *P. Veeraraghavan*, for Appellants.

G. Desappan and *R. Ganesan*, for Respondent.

Public Prosecutor on behalf of Pondicherry State.

V.S.

Appeal dismissed.

[SUPREME COURT].

V. Ramaswami,
V. Bhargava and
Raghubar Dayal, JJ.
23*rd August*, 1966.

Shivanarayan Kabra *v.*
The State of Madras.
Cr.A. No. 20 of 1964.

Penal Code (*XLV of* 1860) *section* 21 (*d*) *and* (*e*), 420—*Forward Contracts* (*Regulation*) *Act*, 1952, *sections* 15, 17—*Criminal Procedure Code* (*V of* 1898), *sections* 239, 537, 361.

The Forward Contracts (Regulation) Act was passed in order to put a stop to undesirable forms of speculation in forward trading and to correct the abuses of certain forms of forward trading in the wide interests of the community and, in particular, the interests of the consumers for whom adequate safeguards were essential. In our opinion, speculative contracts of the type covered in the present case are included within the purview of the Act. One of the contracts in the present case is Exhibit P-42 in which P.W. 2 placed an order for supply of 100 bales of cotton Jarila to be delivered in August, 1958 at Rs. 654 per candy. We think that a contract of this description falls within the definition of " forward contract " within the meaning of this Act and the provisions of that Act are therefore applicable to this case. We consider that Mr. Naunit Lal has been unable to make good his submissions on this aspect of the case.

The legal position has been explained by the Bombay High Court in *Bhagwandas Narotamdas* v. *Kanji Deoji*, (1906) I.L.R. 30 Bom. 205, and affirmed by the Judicial Committee in *Bhagwandas Parasram* v. *Burjorij Ruttonji Bomanji*, (1918) L.R. 45 I.A. 29 : 34 M.L.J. 305. In the present case, therefore, the appellant was acting as principal to principal, so far as P.W. 2 was concerned and the contracts are hit by the provisions of section 15 of the Act.

Even if it is assumed that the appellant did not know English or Tamil the violation of section 361 (1), Criminal Procedure Code was merely an irregularity and it is not shown in this case that there is any prejudice caused to the appellant on this account. In our opinion, the irregularity has not resulted in any injustice and the provisions of section 537, Criminal Procedure Code, are applicable to cure the defect.

Naunit Lal, Advocate, for Appellant.

A. V. Rangam, Advocate, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT].

V. Ramaswam, *V. Bhargava* and
Raghubar Dayal, JJ.
29*th August*, 1966.

P. Arulswami *v.*
The State of Madras.
Cr.As.Nos. 130 and 131 of 1964.

Madras Village Panchayats Act (*Madras Act X of* 1950), *sections* 106 *and* 127—*Sections* 120-*B and* 409, *Penal Code* (*XLV of* 1860), *section* 197, *Criminal Procedure Code* (1898)—*Government of India Act*, *section* 270.

Section 106 of the Madras Act is similar in language to section 197 of the Criminal Procedure Code and for the reasons already expressed we are of the opinion that the sanction of the State Government was not necessary for prosecution of the appellant under section 409, Indian Penal Code. We accordingly reject the argument of learned Counsel for the appellant on this aspect of the case and dismiss this appeal.

R. Ganapathy Iyer, Advocate for Appellant (in both the Appeals).

A. V. Rangam, Advocate, for Respondent (in both the Appeals).

G.R. *Appeals dismissed.*

[SUPREME COURT].

V. Ramaswami, V. Bhargava and *Raghubar Dayal, JJ.*
31*st August*, 1966.

Jagarnath Singh *v.* H. Krishna Murthy.
Crl. A. No. 178 of 1964.

Electricity Act (*X of* 1910), *section* 39—*Section* 44 *and Rule* 138 *of the Act and Rules respectively.*

Applying its two earlier cases A.I.R. 1966 S.C. 849, 852 and in *Ram Chandra Prasad Sharma* v. *The State of Bihar*, (Criminal Appeals Nos. 48-51 of 1963 decided on 11th October, 1966) the Court held : The two circumstances in the present case are not sufficient in our opinion, to establish that the appellant did abstract electrical energy by tampering with the meter. The installation of the meter in a dark corner does not show any guilty conscience of the appellant. In fact, when the meter was installed by the electric company it could have chosen a better lighted place. The presence of the obstruction in the passage is not sufficient to show that the servants of the company could not have reached the meter for the purpose of inspection and checking whenever they chose to do so. There appears to be no statement on the record to the effect that at any time such servants were thwarted in their attempt to check the meter by the appellant or his representatives, or on account of the alleged obstruction in the passage.

It is clear therefore that the appellant's conviction for the offence under section 39 of the Act is bad in law.

We therefore allow the appeal partially and set aside the conviction and sentence of the appellant for the offence under section 39 of the Act. The appeal with regard to the other contentions will stand dismissed.

Akbar Imam and *D. Goburdhun*, Advocates, for Appellant.

Awadesh Nandan Sahay and *S. P. Varma*, Advocates, for Respondent No. 1.

G.R. *Order accordingly.*

[SUPREME COURT].

V. Ramaswami, V. Bhargava and *Raghubar Dayal, JJ.*
2*nd September*, 1966.

Lachhi Ram *v.* The State of Punjab.
Crl. A. No. 177 of 1964.

Criminal trial—Evidence—Approver's evidence—Appraisal.

It was held by this Court in *Sarwan Singh* v. *The State of Punjab*, (1957) S.C.R. 953 : (1957) S.C.J. 699 : (1957) M.L.J. (Crl.) 672, that an approver's evidence to be accepted must satisfy two tests. The first test to be applied is that his evidence must show that he is a reliable witness, and that is a test which is common to all witnesses. The test obviously means that the Court should find that there is nothing inherent or improbable in the evidence given by the approver, and that there is no finding that the approver has given false evidence. The second test which thereafter still remains to be applied in the case of an approver, and which is not always necessary when judging the evidence of other witnesses, is that his evidence must receive sufficient corroboration. In the present case, as we have pointed out above, the High Court has held that the evidence of the approver was reliable and was corroborated on material particulars by good prosecution witnesses who have been believed by the Court. We are, therefore, unable to find any error in the judgment of the High Court in upholding the conviction of the appellant.

B. K. Bannerjee and *N. N. Keswani*, Advocates, for Appellant.

B. K. Khanna and *R. N. Sachthey*, Advocates, for Respondent.

G.R. ——— *Appeal dismissed.*