

In Re: P. Marakkar and ors.

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Court : Chennai

Decided On : Apr-23-1915

Reported in : 30Ind.Cas.159

Judge : Spencer and; Coutts-Trotter, JJ.

Appellant : In Re: P. Marakkar and ors.

Judgement :

ORDER

1. The question is whether the act of the distrainer in this case was legal, so as to make resistance to his act an offence. Br. Pandalai's main contention is that the only person who can be classed as the defaulter within the meaning of Section 8 of the Madras Act VI of 1864 is the person registered as paltadar, and that the service on the paltadar, whether present or absent, of a demand in writing is a condition precedent to making distraint under that Act. Taking for granted the first part of this contention to be correct, the difficulty as to the second is that the Act does not contain any provision requiring, in cases where the defaulter is absent at the time of distraining, that the demand in writing described in Section 8 should be delivered to the defaulter before the distress. But it is argued that such a procedure must be assumed to have been intended from the fact that the person liable to pay the arrear is the paltadar and that a production of the demand in his absence would be a meaningless act. In construing the Act, we are not inclined to read anything into it which is not expressly stated therein. No provision is made in the Act as to what the distrainer is to do with the written demand in the case of the

defaulter not being present when the distrainer arrives on the land, except in the third part of the section which reads thus: When a defaulter may be absent, a copy of the writing with the endorsement shall be fixed or left at his usual place of residence, or on the premises where this property may have been distrained, before the expiration of the third day, calculating from the day of the distress. 'This clearly refers to what is to be done after the distress and is not a condition precedent to making it. The section itself and the Bird's Stemming Order No. 44, paragraph 7, which deals with the procedure in distraint, declare that the demand in writing is to be the distrainer's authority for making the distress. In the form of the demand, as given in the appendix to the Board's Standing Orders, there is a direction which practically reproduces the words of the section that the distrainer should produce this order, and if the sum due be not at once paid, he may make distress, and on the day on which the property is distrained he should deliver to the defaulter a copy of the order endorsing thereon a list of the property distrained and the name of this place where it is kept.' It is obvious that if the defaulter is not present at the spot, it cannot be shown to him then and there. But the arming of the distrainer with a written demand signed by a duly empowered Revenue Officer is an act which serves to distinguish him from a thief or trespasser in the eyes of the tenant or mortgagee in occupation of the land. Section IX of the same Act provides for a tenant whose crop, are attached for an arrear of revenue paying the arrear and deducting the amount from any rent due by him to the paltadar. It thus appears that the production of the written demand is not such a meaningless act as it might be thought, and that the provision for the delivery on the same day of a copy to the defaulter is only intended to apply when the defaulter is present. The petitioners cannot rely on any omission to furnish the defaulter with a copy of the demand after the distraint was made as an excuse for resisting the distraint. We consider that P.W. No. 1, when making the distraint in the absence of the paltadar who lived twenty miles away, did all that was required of him by law. The point of law now raised was not decided in *Queen-Empress v. Ramasami* 16 M.K 364, which Dr. Pandalai has cited in favour of his contention.

2. The sentences imposed for the offences committed by the petitioners in defying the authority of the Revenue Officers are not, in our opinion, excessive.

3. The criminal revision petition is dismissed.

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