

## SUPREME COURT.

U KHIN AND SEVEN OTHERS (APPLICANTS)

v.

THE DEPUTY COMMISSIONER, MYAUNGMYA  
AND TWO OTHERS (RESPONDENTS).\*† S.C.  
1949

July 11.

*Burma Agriculturists' Debt Relief Act (Burma Act LXXII of 1947), ss. 3, 4 and 31—Rules 3 and 4 made under s. 31 of the Act authorizing Deputy Commissioner and Subdivisional Officers to act till the Debt Settlement Board is constituted—Rules whether ultra vires.*

The point for decision was whether in view of the fact that the Burma Agriculturists' Debt Relief Act nowhere provides that any officer can perform the duties of the Debt Settlement Board, Rules 3 and 4 made under s. 31 of the Act authorizing the Deputy Commissioner and Subdivisional Officers to perform the duties of the Board till the Debt Settlement Board is established are *ultra vires*.

*Held*: Rules which have been made under an Act for the purpose of achieving the objects of the Act will be *intra vires* so long as they are not inconsistent with any of the provisions of the Act.

*Ex-parte Davis*, L.R. (1872) 7 Chan. App. 526 at 529, followed.

S. 31 of the Burma Agriculturists' Debt Relief Act gives the President power "to make rules to carry out all or any of the purposes of the Act and not inconsistent therewith."

The Burma Agriculturists' Debt Relief Act was passed with the object of giving immediate relief to the agriculturists-debtors. The object of the Act may be partially defeated if there is delay in the constitution of the Board or reconstitution in case the Board is dissolved. Therefore in order to give effect to the main purpose of the Act the Rules 3 and 4 were made authorizing the Deputy Commissioner and the Subdivisional Officers to perform the functions of the Board till the Debt Settlement Board is constituted; and they are not inconsistent with any of the provisions of the Act and in view of the wide terms of s. 31 those rules are not *ultra vires*.

*Dr. Thein* for the applicant.

*Ba Sein* (Government Advocate) for the respondent  
No. 1.

\* Civil Misc. Application No. 7 of 1949.

† *Present*: SIR BA U, Chief Justice of the Union of Burma, MR. JUSTICE KYAW MYINT and U TUN BYU, J.

The judgment of the Court was delivered by

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U TUN BYÛ, J.—It appears that the applicants, U Khin and seven others, instituted a suit, which was known as Civil Regular No. 18 of 1947 of the Court of the 2nd Assistant Judge, Wakèma, against Ko Ba Maung and Ma E May, who are husband and wife, for the recovery of a sum of Rs. 2,130-2-0, which was said to be the amounts due on three promissory notes. After the suit was instituted the 2nd Assistant Judge, Wakèma, received an intimation which was signed by the *Akunwun* U Tha Hla Gyaw who purported to have signed it on behalf of the Deputy Commissioner, Myaungmya, intimating that Ko Ba Maung and Ma E May had filed an application under section 4 of the Burma Agriculturists' Debt Relief Act, 1947; and the 2nd Assistant Judge thereafter passed an order of stay, *sine die*, in the Civil Regular Suit No. 18 of 1947 in view of the provisions of section 26 of the Burma Agriculturists' Debt Relief Act, 1947.

The application of Ko Ba Maung and Ma E May before the Deputy Commissioner, Myaungmya, was apparently made in pursuance of Rules 3 and 4 of the Agriculturists' Debt Relief Rules, 1948, which read :

"3. (1) Pending the constitution of the Debt Settlement Boards in pursuance of sub-section (1) of section 3 of the Act a debtor may make an application for compulsory scaling down of his debt in accordance with the provisions of sections 4, 5, 6 and 7 of the Act to the Deputy Commissioner, the Subdivisional Officer or the Township Officer within whose jurisdiction he resides :

Provided that in the case of a debtor against whom a decree has been passed, such application shall be made to the Deputy Commissioner, the Subdivisional Officer or the Township Officer of the place where the Court which passed the decree in the first instance is situate.

(2) The applications so made shall be made over to the appropriate Board when constituted.

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4. For the purposes of section 26 of the Act, the applications made under Rule 3 (1) of these Rules shall be deemed to be applications made to a Board."

It has been contended on behalf of the applicants U Khin and others that Rules 3 and 4 are *ultra vires* of the Burma Agriculturists' Debt Relief Act, 1947. It will be convenient to reproduce here the provisions of section 31 (1) of the Agriculturists' Debt Relief Act, 1947, which are as follows :

" 31. (1) The President may make rules to carry out all or any purposes of this Act and not inconsistent therewith."

It will be observed that sub-section (1) of section 31 gives a wide rule making power for the purpose of achieving the objects of the Act ; and rules which have been made for the purpose of achieving the objects of that Act will be *intra vires* so long as they are not inconsistent with any of the provisions of the Act.

In the case of *ex-parte Davis* (1) James L.J. observed :

"The Act of Parliament is plain, the rule must be interpreted so as to be reconciled with it, or if it cannot be reconciled, the rule must give way to the plain terms of the Act."

It will be necessary to examine the provisions of the Burma Agriculturists' Debt Relief Act, 1947, in order to ascertain whether Rules 3 and 4 of the Agriculturists' Debt Relief Rules, 1948, are *ultra vires* or *intra vires* of the Burma Agriculturists' Debt Relief Act, 1947. The question then becomes whether the rule making power given under section 31 has, in framing Rules 3 and 4, been exceeded.

A perusal of the Burma Agriculturists' Debt Relief Act, 1947, shows that the object of the Act is to extend certain reliefs and afford certain facilities to the

(1) (1872) L.R 7, Chan. App. 526 at 529.

agriculturists-debtors in respect of the repayments of the loans which they owe—*vide* sections 13 and 14 and other sections of the Burma Agriculturists' Debt Relief Act, 1947. It is obvious that the agriculturists-debtors cannot obtain the reliefs and facilities, which were intended for them under the Burma Agriculturists' Debt Relief Act, 1947, unless the Debt Settlement Boards are constituted in the various districts of Burma in which the Act is in force. It is not difficult to conceive that there might be, for one reason or another, considerable delay before the Debt Settlement Boards can be constituted under section 3; and delay in constituting such Boards are likely to deprive some of the agriculturists-debtors of their right to claim the reliefs given to them under the Act. It will be necessary, if some of the agriculturists-debtors are not to be deprived of the reliefs which they are entitled to under the Burma Agriculturists' Debt Relief Act, 1947, to make provisions by means of rules under which applications under the Burma Agriculturists' Debt Relief Act, 1947, might be filed before the Debt Settlement Boards had been constituted. If this is not done, the creditors could take advantage of the delay in constituting the Debt Settlement Boards and have their cases decided before the Boards are constituted. It is also possible that it might be necessary to dissolve some of the Debt Settlement Boards which had already been constituted, and in which case it will be necessary to also make provisions by means of rules under which the applications under the Burma Agriculturists' Debt Relief Act, 1947, might be presented before the new Debt Settlement Boards are constituted if we are to prevent the creditors from taking advantage of the delay which might occur in the interval. Rules 3 and 4 must accordingly be considered to be rules which are consistent with the

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provisions of the Burma Agriculturists' Debt Relief Act, 1947, in that they purport to help in giving effect to the purposes of the Act. We are unable to see anything in the Burma Agriculturists' Debt Relief Act, 1947, which will indicate that Rules 3 and 4 of the Agriculturists' Debt Relief Rules, 1948, are inconsistent with any of the provisions of the Burma Agriculturists' Debt Relief Act, 1947. Rules 3 and 4 must therefore be considered to have been properly made within the ambit of the rule making power given in section 31 of the Burma Agriculturists' Debt Relief Act, 1947.

It does not appear to us that there is any substance in the contention that rules of the nature of Rules 3 and 4 of the Agriculturists' Debt Relief Rules, 1948, could not properly be made unless and until the Debt Settlement Board has been established. It is clear that section 3 does not provide for the separate establishment of a Debt Settlement Board before the personnel of the Board are appointed; and we do not see anything in the Act which will indicate that no rules of the nature of Rules 3 and 4 could be framed before the Debt Settlement Board is established.

The application is therefore dismissed. Advocate's fee five gold mohurs in respect of Respondent No. 1 who was represented by Counsel during the hearing of this application.