
(1936) 08 MAD CK 0052
In the Madras High Court

A. Krishnaswami Iyengar and Others APPELLANT
Vs
Secy. of State RESPONDENT

Date of Decision : 17-08-1936

Acts Referred:

Tamil Nadu Irrigation Cess Act, 1865 — Section 1

Citation : AIR 1936 Mad 962

Hon'ble Judges : Lakshmana Rao, J

Bench : Division Bench

Judgement

Lakshmana Rao, J.—This appeal arises out of a suit by the father of the appellants, a shrotriamdar of Thiruvenkaranai village, for inter alia a declaration that he is entitled to irrigate survey Nos. 414 and 417 of Kannavakan village with water of the channel C D leading from the Tenneri tank to his adjacent shrotriam land of Thiruvenkaranai village, and for recovery of the amount levied as penal assessment, and the sole question for determination is whether by reason of his being a shrotriamdar of Thiruvenkaranai village which is entitled to 6/100ths of the water of the Tenneri tank, and the channel C D ending in his adjoining shrotriam land, of Thiruvenkaranai, the plaintiff is entitled to use the water from the channel C D free of charge for irrigating the plaint lands.

2. The plaint lands are ryotwari wet lands of Kannavakam village registered under the Kannavakam tank, and as found by the Courts below they were being irrigated with water from the Kannavakam tank, till their purchase by the plaintiff in 1906. Irrigation of these lands from the Kannavakam tank had by then become difficult, if not impossible, owing to the raising of the embankments of the madugu by the vendor and his neighbour, and they were irrigated thereafter with the drainage water of the adjoining shrotriam land. Permission of the revenue authorities was not obtained for such irrigation, and an application by the plaintiff in 1910, to alter the source of irrigation was refused. The unauthorized irrigation was however continued, and a channel was dug by the plaintiff subsequently in continuation of the channel C D to irrigate the plaint

lands. Penal assessment; was levied and the question is whether the levy is illegal. The Tenneri tank belongs to Government though the shrotriam village of Thiruvankaranai is entitled to 6/100ths of its water and it appears to have been conceded in the trial Court, that the channel C D is a Government channel. Even otherwise the Madras Irrigation Cess Act as amended in 1900 empowers the Government to levy the additional cess, whenever water by direct or indirect flow or by percolation or drainage from any Government source from or through adjoining land, irrigates any land under cultivation and as laid down in *Ayyanna v. Secy. of State* 1933 56 Mad 696 what has to be decided is not whether the water which irrigates the land belongs to Government but whether it comes from a source belonging to or constructed by Government.

3. The Act, as pointed out by Venkatasubba Rao, J., in *Syed Hyder Ali Saheb v. Secy. of State* 1933 MWN 1457, is not concerned with the question whether the water has or has not become the property of the person using it nor as observed in *Secy. of State v. Swami Narathiswarar* (1910) 34 Mad 21 does the water cease to be water from a Government source by flowing through or into shrotriam land. The user for the purpose of irrigation need not be voluntary under the amended Act, vide *Secy. of State v. Swami Narathiswarar* (1910) 34 Mad 21 and the assessment would be quite legal unless the appellants can bring themselves within the provisos to Section 1 which empowers the Government to levy the cess. Proviso 2 would not apply as the irrigation from the unregistered source was without authority and proviso 1 relates to lands not held under ryotwari settlement. Farther, as decided by the Privy Council in *Secy. of State v. Subbarayudu* 1932 55 Mad 268, the right conferred thereunder does not extend beyond the property settled on the Zamindar, Inamdar or Shrotriamdar, and the fact that the channel ends in the shrotriam land of the plaintiff is not of any consequence. The Zamindar, Inamdar or Shrotriamdar, may on the authority of the decision in *Secy. of State v. Subbarayudu* 1932 55 Mad 268 use the water free of charge only in respect of the land to which the engagement relates, and the *Bala Surya Prasada Row v. Secy. of State* 1917 PC 42 Case wherein the right of the Zamindar to irrigate lands within the zamindari was upheld has no bearing. The claim here is to irrigate ryotwari lands of a different village and no question of riparian rights or easement or user thereof for any purpose connected with the dominant heritage arises. It follows that the levy of the cess in this case was legal and the suit was rightly dismissed. The second appeal therefore fails and is dismissed with costs.