

(1958) 02 MAD CK 0035
In the Madras High Court

AL.SP.PL. Thirunavukkarasu Chettiar and Others

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 10-02-1958

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(2)(d)

Citation : (1959) 72 LW 281 : (1958) 2 MLJ 596

Hon'ble Judges : Panchapakesa Ayyar, J;Panchapakesa Aiyar, J

Bench : Division Bench

Judgement

Panchapakesa Ayyar, J.—This is an appeal by the plaintiffs in Original Suit No. 72 of 1952 on the file of the Subordinate Judge of Tanjore, against the judgment and decree dismissing their suit with costs.

2. The facts are briefly these: The plaintiffs, who were the present owners of six villages of the Tanjore Palace Estate, had filed that suit for a declaration that the suit properties, six villages out of the 199 villages of the Tanjore Palace Estate, confiscated by the Government of Madras on 18th October, 1856, along with certain properties of the Tanjore Rajah, and given back on 21st August, 1862, to the widows and heirs of the Rajah by the British Government, on their memorial to the Queen and Parliament, were not inam "estates" within the meaning of Madras Act XXVI of 1948, read with Section 3(2)(d) of Madras Act I of 1908, and were not capable therefore of being taken over by the Government under the provisions of Act XXVI of 1948, the Estates Abolition Act, and for a permanent injunction restraining the defendant, the State of Madras, from taking possession of these properties. It was contended by the plaintiffs that the return of the 199 villages of the Tanjore Palace Estate to the widows and heirs of the Rajah on 21st August, 1862, would not constitute a grant or a regrant but would be only a restoration of the private properties of the Rajah unjustly taken over by the Government which realised later on the injustice of the seizure. It was urged that there was no grant of any kind, and even the villages were not named in the order of 1862, let alone the grant being of inam villages. It was urged further

that there was no proof that only the land revenue, or the melwaram, was granted to the heirs of the Rajah in 1862 even if it be taken as a grant of the 199 villages, including these 6 villages in 1862.

3. The suit was strongly opposed by the State of Madras, on various grounds which would be clear from the issues. The learned Subordinate Judge framed the following issues:

(1) Whether the suit villages are not inam Estates to which Madras Act XXVI of 1948 will apply?

(2) Whether the grant made by the Government in 1862 to the late Ranee of Tanjore was only of the land revenue, as alleged in paragraph 7 of the Statement, and whether this will be sufficient, even if true, to bring the suit properties within the purview of the Estates Land Act?

(3) What was the real character and what are the legal incidents of the restoration of the said private properties in the year 1862?

(4) Whether the suit is bad for multifariousness?

(5) Whether the suit is bad for non-joinder of the tenants?

(6) Whether the plaintiffs are estopped from contending that the villages are not "estates" for all or any of the reasons alleged in the statement?.

(7) Whether the suit is barred by Act XXX of 1947?

(8) Whether the suit is barred by limitation for the reasons set forth in paragraph 14 of the written statement?

(9) Whether the Court-fee paid is insufficient?

(10) To what reliefs are the plaintiffs entitled?

4. After discussing the entire evidence, the learned Subordinate Judge found issues 4 to 9 for the plaintiffs. But, relying on many rulings of this Court and especially on the Full Bench ruling of this Court in *S. Sundaram Ayyar, Receiver of the Tanjore Palace Estate Vs. Ramachandra Ayyar and Others*, and because it was clear (and was indeed admitted) that there were ryots with occupancy rights in these villages, who had been proceeded against by the Plaintiffs in certain proceedings in revenue Courts for recovery of rent, the learned Subordinate Judge held on issues 1 to 3 that the suit villages were inam estates whose melwaram alone was granted in 1862, and dismissed the suit with costs, holding that all the suit villages were inam villages constituting estates within the meaning of Section 3(2)(d) of the Estates Land Act, and Grown grants of the melwaram in them by a sovereign to a subject, in 1862, and were therefore liable to be taken over by the Government under the Madras Estates Abolition Act. Hence this appeal.

5. We have perused the records, and heard the learned Counsel for the

appellants and the learned Government Pleader contra. Mr. K. Rajah Ayyar, the learned Counsel for the appellants said that the Full Bench ruling in Sundaram Aiyar v. Ramachandra Aiyar (1917) 32 M.L.J. 383 : ILR Mad. 389 , related only to the village of Ullikadai, and not to the other 198 villages given to the heirs of the Rajah by the Government in 1862, and that the village of Ullikadai was held to be an estate only because of the concession and admission made in that case, and not on strict proof. He also pointed out that all the decisions so far holding certain villages comprised in the Tanjore Palace Estate to be estates within the meaning of the Estates Land Act have been between the landlords and the tenants, and that this is the first suit under the Estates Abolition Act where the Government and the landlord are the parties, and all the villages come into the picture, and that he had several new points to urge, points which were not taken in any of the decided cases. We are of the opinion that the fact that this is the first case where the government figures as a party against the landlord is not very material as the question of the villages being "estates" is the same. But we shall consider the alleged new facts not adduced before the Courts before, or taken into consideration by them.

6. The first of these alleged facts is that the Government not only gave back the 199 villages to the heirs of the Rajah, in 1862, on a petition by those heirs to the Queen and Parliament, but, on a subsequent petition to the Queen and Parliament by them, gave back also the net income from those properties for the period of six years the Government was in possession of those villages, and that this would show that it was not a case of grant of 199 villages by the Government to the heirs of the Rajah in 1862 but a restoration of the villages of the Rajah unjustly taken over by the Government in 1856 on its realizing the injustice of its seizure. Reliance was placed by Mr. Rajah Ayyar on the ruling of the Allahabad High.Court in Hargovind Singh Vs. Collector of Etah and Another . We have looked into this ruling. It will not apply to the facts of this case. There, the Government realised its wrong it had done, and restored all the former rights of the owner and gave back the income also at the same time as the properties. Here, Government seized 199 villages of the Palace Estate and several other properties, and after six long years, on an ad misericordium petition by the heirs of the Rajah to the Queen and Parliament expressing their pecuniary difficulties and heavy debts, gave back the 199 villages but not the other properties, as an act of grace, as termed in the judgment of this Court. Again, on a subsequent similar petition by the heirs of the Rajah mentioning that this grant of the 199 villages by itself, would not relieve them wholly from their financial difficulties and debts and that the net income for the years of possession with the Government should also be given to them, they gave the net income also as a further act of grace, as termed in some of the judgments of this Court. So, this new fact will not alter the decision taken by several Benches of this Court, let alone the Full Bench decision in Sundaram Aiyar v. Ramachandra Aiyar (1916) 32 M.L.J. 333 : ILR Mad. 389, and by the Privy Council in Chota Raja Saheb v. Sundaram Ayyar (1936) 71 M.L.J. 41 : 1936 L.R. 69 IndAp 224 : ILR 59 Mad.

633 (P.C.). We may state briefly that as early as *Jijoyiamba Bayi Saiba v. Kamakshi Bayi Saiba* (1868) 3 M.H.C.R. 424, the view taken by this Court has been uniform namely that the Government had seized 199 villages of the Tanjore Palace Estate in its capacity as Sovereign, along with the other properties, and had six years later granted the 199 villages to the heirs of the Rajah as an act of grace. It is no use urging that the seizure itself was a wrongful act. The old theory that "the King can do no wrong" will apply, indeed, even the right by brutal conquest has been held to prevail over the righteous rights of owners, and only the rights vouchsafed by the conqueror have been held to enure for the benefit of the owner of the property. What is wrong in reality may not be a wrong in law, especially in olden laws which recognised the right by brutal conquest and forcible seizure by the conqueror. The absence of a deed of grant in 1862 is not of much consequence either way. The learned Government Pleader had to concede that there was a grant in 1862 of these 199 villages including these six villages. Mr. Rajah Aiyar does not dispute that these six villages formed part of the 199 villages seized in 1856 and granted in 1862. No doubt, Mr. Rajah Aiyar urged that a list of the 199 villages was not appended to the order granting the villages in 1862, and the term used in the order was "lands" and not "villages". The learned Government Pleader urged that a list must have been attached to the order of 1862, and that, in any event, nobody seriously disputes that these villages were seized in 1856 and granted in 1862. We are of the opinion that these 199 villages must have been mentioned in the correspondence between the Madras Government and the British Government before the order was passed in 1862, and that everybody must have understood what the 199 villages restored were. As remarked by a Bench of this Court, consisting of Govinda Menon and Ramaswami, JJ., in *Chidambaram Chettiar v. Ramaswami Odayar* (1957) 1 M.L.J. 72, it was a fresh grant in 1862, and it must be considered to be "the root of a new title".

7. We may add here that this Bench decision was not available to the lower Court at the time of its judgment, nor was even the judgment of another Bench of this Court, to which one of us (A. Section P. Ayyar, J.) was a party, in *Abdul Rahim v. Swaminatha* (1954) 2 M.L.J. 282 : ILR (1955) Mad. 744, holding that the Full Bench decision in *S. Sundaram Ayyar, Receiver of the Tanjore Palace Estate Vs. Ramachandra Ayyar and Others*, applied not only to the Ullikadai village directly concerned in that case but to all the 199 villages of the Tanjore Palace Estates, granted to the heirs of the Rajah in 1862, and that all these villages were estates u/s 3(2)(d) of the Estates Land Act I, available to the lower Court as that decision was delivered only on 4th February, 1954, and the lower Court's judgment was delivered on 15th February, 1954.

8. We may add also that more than 20 appeals are now pending in the Supreme Court on this very point of the 199 villages of the Tanjore Palace Estate being "estates" under the Estates Land Act. Leave was granted by us in S.C., C.M.P. Nos. 6623 and 6625 of 1954, on 5th February, 1955, for appealing to the Supreme Court against the decision in *Abdul Rahim v. Swaminatha* (1954) 2

M.L.J. 282 : ILR (1955) Mad. 744. Leave was granted in S.C, C.M.P. No. 8349 of 1953 by another Bench of this Court, to which one of us (Basheer Ahmed Sayeed, J.) was a party, against the decision of that Bench in Second Appeal No. 1513 of 1948 holding Pattiswaram Thattimalapadugai, one of these 199 villages to be an "estate" under the Estates Land Act. Leave was again granted in S.C., C.M.P. Nos. 7302 to 7320 of 1956, to no less than 18 appellants, by a Bench of this Court consisting of the Chief Justice and Ramaswami, J., against the Judgment of Govinda Menon and Ramaswami, JJ., in Appeals Nos. 223 and 234 of 1951 and 264 to 280 of 1952, on condition that the appellants should pay the respondents their costs in the Supreme Court in any event. There are a few decisions holding that the decision of the Full Bench in S. Sundaram Ayyar, Receiver of the Tanjore Palace Estate Vs. Ramachandra Ayyar and Others, , would apply only to Ullikadai village, and that regarding the 199 other villages the decision would rest on the facts of each case.

9. Mr. Rajah Aiyar relied strongly on the Privy Council decision in (1943) L.R. 70 I.A. 112 (Privy Council) and pointed out that it had not been brought to the notice of the Bench which decided the case in Abdul Rahim v. Swaminatha (1954) 2 M.L.J. 282 : ILR (1955) Mad. 744, and so had not been considered by it. But even in that case it was held that technically the restoration of the 199 villages to the heirs of the Rajah in 1862 would constitute a grant by the Crown. That is why Satyanarayana Rao, J., when calling for a finding in S.A. No. 2465 of 1948 on 19th March, 1953, considered that this Privy Council decision did not cast any doubt on the wide proposition laid down by the Full Bench in S. Sundaram Ayyar, Receiver of the Tanjore Palace Estate Vs. Ramachandra Ayyar and Others, . If there was a fresh grant, it would form the root of a new title. We may add that in Chidambaram Ghattiar v. Ramaswami Udayar (1957) 1 M.L.J. 72, the learned Judges dealt exhaustively with all the rulings up to date. So the weight of the rulings is certainly in favour of the lower Court's finding that all the 199 villages are inam grants and "estates" and against Mr. Rajah Aiyar's contention, only a few stray, (and, in our opinion, wrong) rulings being to the contrary. It is therefore for the plaintiffs in this case (the appellants herein), if so advised, to establish their case in the Supreme Court if so advised. As it is, we are bound by the Full Bench Ruling and the Division Bench rulings mentioned above. The Privy Council in (1943) L.R. 70 I.A. 112 (Privy Council) did not say that the Full Bench Ruling was wrong. We see no use also in referring the matter to a Full Bench, even if we were inclined to do so, which we are not. Nor did Mr. Rajah Aiyar press for that course, preferring an appeal to the Supreme Court where 20 appeals on the point are pending.

10. The next new circumstance relied on by Mr. Rajah Aiyar was that Exhibit A-24 showed that six minor inams for which title deeds were granted by the Inam Commissioner in these 199 villages were cancelled, and the quit rents refunded, when the villages were granted to the heirs of the Rajah in 1862, and that this would show that the grant of the villages in 1862 was not an inam grant to the heirs of the Rajah. The argument is not convincing. It has to be noticed that the

minor inam title deeds were granted after the villages were taken over by the Government in 1856 and before they were restored to the heirs of the Rajah in 1862. So the fact loses much of its significance and strength.

11. Another alleged new fact brought to pur notice by Mr. Rajah Aiyar was that there are remarks in some of the Judgments of this Court and in the Judgment of the Privy Council in (1943) L.R. 70 I.A. 112 (Privy Council) , that the Rajahs were enjoying the lands in the 199 villages absolutely before 1856 and had both the warams, and that, therefore, the Rajahs, like any other private owners, would be entitled to resist they attempt at. making the villages "estates" under the Estates Land Act simply because they were wrongly seized in 1856. It is true that in the case of private lands, however large in extent, there can be no question of Melwaram and Kudiwarant. But then Mr. Rajah Aiyar had to concede (as was conceded in several cases before) that in all these villages there are occupancy ryots and the proceedings have been taken against them summarily in the Revenue Courts and that the appellants have conceded the occupancy rights to the ryots in these six villages and do not dispute their existence. This takes away the bottom from his arguments, as no private owner of both the warams will have occupancy ryots in his private lands. Such occupancy ryots are found only in estates under the Estates Land Act where the owner has only the Melwaram.

12. The next new fact relied on was that in Letters Patent Appeal the order in W.P. No. 737 of 1952 regarding one of the villages included in the 199 villages was quashed on the ground that the facts found by the lower Court could not be canvassed again in the writ petition. But, here even the tribunal had canvassed the facts, and found that there were occupancy rights, and, indeed, it was not contended before them that there were none. The argument that it was not proved that the grant in 1862 was of Melwaram alone will, of course, collapse on this concession.

13. In the end, therefore, we are of the opinion that the lower Court's judgment was correct in the light of the rulings available to the Subordinate Judge, and that the judgment has been strengthened by the Bench decisions in Chidambaram Chettiar v. Ramaswami Udayar (1957) 1 M.L.J. 72, and Abdul Rahim v. Swaminatha (1954) 2 M.L.J. 282 : ILR (1955) Mad. 744. It is unnecessary for us to speculate what the Supreme Court decision would be in the 20 appeals for which leave has been given, or in this case if these appellants get leave and take this matter also to that Court. It cannot be said that it is sure to allow all these appeals. We feel bound by the decisions above and feel no doubts about their correctness, and hold that the lower Court's decision was right. So we confirm the lower Court's judgment and decree except as regards costs. In the state of the law available to the lower Court, and with some rulings, of this Court before it holding some of the villages not to be "estates", and with two important Bench rulings, in Abdul Rahim v. Swaminatha (1954) 2 M.L.J. 282 : ILR (1955) Mad. 744, and Chidambaram Chettiar v. Ramaswami Udayar

(1957) 1 M.L.J. 72, not being available to it, we consider that the lower Court should have directed all the parties to bear their own costs, instead of directing the plaintiffs to pay to the defendant-Government Rs. 3,021 as costs. We may observe that these six villages were never the Subject matter of any suit or appeal before, and were never declared to be "estates" specifically. So the plaintiffs were justified in filing the suit and trying their luck, there was no need to impose this harsh term on the plaintiffs. Except for taking out the direction regarding costs, and putting in its place a direction making all the parties in the suit bear their own costs, we confirm the Judgment and Decree of the lower Court and dismiss this appeal. In this appeal also, we direct all the parties to bear their own costs.