

(1975) 08 MAD CK 0003

In the Madras High Court

Case No : W.A. No's. 189 to 193 and 214 to 217 of 1973

Ayyam Perumal and others

APPELLANT

Vs

The Estates Abolition Tribunal, Salem

RESPONDENT

Date of Decision : 12-08-1975

Acts Referred:

Madras Estates Land Act, 1908 — Section 185, 3(10)(a)

Citation : (1975) ILR (Mad) 189

Hon'ble Judges : Veeraswami, C.J.;Natarajan, J

Bench : Division Bench

Advocate : K. Yamunan, for the Appellant; T. Rangaswami Ayyangar and A.M. Hidayatullah, for the Respondent

Judgement

Veeraswami, C.J.—These appeals are from the Judgment of Ramaprasada Rao, J. in Arunachalam v. Estates Abolition Tribunal 1972-II

M.L.J. 594. He declined to quash an order of the Estates Abolition Tribunal, Salem, which had agreed with the order of the Assistant Settlement

Officer, Salem directing ryotwari patta to be issued to the contesting respondents, the quondam landholders, for certain lands under S. 12(a) (i) of

the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act. 1948 (Tamil Nadu Act 26 of 1948). The lands are situated in a Zamindari

village at Dharmapuri. Originally, the lands are said to have belonged to one Gulam Ali. On his death, Saliah Sahib, the grand-father of the

contesting respondents before the learned Judge, succeeded, and on his death. Items 1 to 12 covered by patta No. 1 and items 13 to 17 covered

by patta 3, were allotted to the share of his son, Inayatullah, Inayathullah died in 1919 issueless. His brothers Habibullah, Azeezullah, Noorullah

and Naziruddin, his sister Ameerunnisa Begum and his widow became entitled to

the properties in certain shares. Subsequently, by reason of purchases Azeezullah became the sole owner of items 1 to 12 and 24. He is the father of the former landholders-respondents.

2. The evidence before the Tribunal consisted of certain recitals in the sale deeds in favour of Azeerullah describing the lands as Pattukattu lands, accounts relating to the years 1908, 1909 and 1913 to 1915 indicating expenses incurred for agricultural labour and oral evidence to the effect that after 1930 the lands were leased out from time to time on short term basis. One Tribune Officer who was examined as a court witness has asserted that the lands were private in character. Both the assistant Settlement Officer and Estates Abolition Tribunal, concurred in finding that the contesting respondents as Mittadars were in possession of the lands having ""both Melwaram and Kudiwaram rights"" in them, that they were cultivating those lands themselves and leasing them out to whomsoever they pleased getting rent in cash and kind; that they had also changed the lessees and that, therefore, the land should be held to be private lands. The Tribunal referred to *Pertannan v. A.S. Amman Kovli* AIR 1962 Mad. 323;64 L.W. Suppl. 1 (F.B.) and purported to apply this decision to the facts of these cases.

3. It is not in dispute that the claim to patta for the lands made by the contesting respondents was under S. 12(a)(i) of the Abolition Act, to wit, as lands which, immediately before the notified date, belonged to them as private lands within the meaning of S.3 Cl. (10) (a) of the Tamil Nadu Estates Land Act, 1908 (Tamil Nadu Act (1) of 1908). They did not claim however, that the lands stood recorded as their private lands in a record prepared under the provisions of Chap. 11 and 12 of the Estates Land Act; not did they admit that the lands had been subsequently converted into ryoti lands.

4. S. 3 (10) (a) of Tamil Nadu Act 1 of 1908 defines "private land" in the case of an estate as the domain or home-farm land of the land-holder by whatever designation known, such as Kambattam, Khas, Sir or Pannai. The definition also took in by inclusive words lands which had been proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years, immediately before the commencement of the

Act. That the Zamin village in which the lands are situate was an estate for purposes of the Estates Land Act is common ground. As to the scope of the definition and the character of the land to be private land, there are a plethora of cases decided by this court, the Privy Council and the Supreme Court over a few decades, With due respect, we have to observe that they present variety of approaches and observations.

5. We shall presently refer to some of the important decisions. But before doing so, we would look at the statute itself to find as to what precisely

is private land within the meaning of S. 3 (10) (a) of the Estates Land Act. The definition as set out in that provision has been just referred to. S.3

(16) defines "ryoti land" as cultivable land in an estate other than private land. But this type of land does not include communal property such as

beds and bunds of tanks, threshing-floor and lands granted on service tenure. S. 8 which deal a with merger of occupancy rights shows that a

landholder who owns the melwaram by purchasing the ryoti's interest or the Kudiwaram relating thereto cannot own the land as private land. In

other words, no merger is brought about by the same person coming to own both the Melwaram and the Kudiwaram. S. 185 lays down a rule of

evidence which is that when in any suit or proceeding it is necessary to determine whether any land is the landholder's private land, regard should

be had to local custom, in the case of an estate within the meaning of S. 3(2) (a) (b) (c) or (e), to the question whether the land was before the first

day of July 1898 specifically let as private land, and to any other evidence that may be produced. It is important to note that the first proviso to this

section directs that the land shall be presumed not to be private land until the contrary is proved. These provisions are clear that when under S.12

(a) of the Abolition Act, a land is claimed to be private land, one should start with the presumption that it is ryoti land until the contrary is proved.

The question, therefore, arises as to what is required to be proved to rebut the presumption. To appreciate this aspect of the matter, it is necessary

to have a precise notion of the character of the land to be private land.

6. The expressions used in the definition of the term "private land" are "domain or home-farm land". These words are followed by ""such as

Kambattam, khas, Sir or pannai"" and the further inclusive words which bring into the definition of private land, land which is proved to have been

cultivated as private land by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years, immediately before the commencement of the Act. "Domain" is an expression commonly used in England to indicate land which is appurtenant to or surrounding a manor, which the landholder intends to hold as his own for purposes of cultivation, whether the land is actually cultivated or not. A reference to the dictionaries leaves us with the impression that this is the substance of the domain land. "Home-farm" as the expression itself indicates is land directly cultivated by the holder thereof. This need not necessarily be appurtenant to or surrounding the manor or the landholder's home or palace as it used to be. "Domain" and "home-farm" do not, therefore, mean the same thing ; but express different ideas.

The test of domain land to be regarded as private land would be whether it is appurtenant or surrounding the manor and the landholder intends to own it as his own for purposes of cultivation. So long as this intention is evident, short-term lease of the land for purposes of convenience will not necessarily be inconsistent therewith, but will indicate an intention to resume the land for the land-holder's cultivation. Home-farm land can be identified by the holder thereof either directly himself cultivating the land or under his supervision by hired labour. It is true that the definition of "private land" includes also lands cultivated by the landholder as private land by his own servants or by hired labour for the requisite period mentioned in the statutory provision. But, this as we think is only a statutory direction to identify land either as domain or home-farm land. It does not appear to us that it is land meant to be a distinct category different from "domain" or "home-farm". If the land was cultivated in the manner suggested by the statutory provision, it has then to be taken that it is private land, that is to say, it is either domain or home-farm land. The quantum of evidence required to outweigh the presumption under S.185 is a different matter and will depend upon the facts in each case. That, in our opinion, is the scope of "private land" under S. 3(10)(a) of the Estates Land Act. But, as shall see, decisions of courts have applied the definition to the facts in each case and the observations made as to the scope of the definition and the proof required to outweigh the presumption have not been always unanimous, but differ in their angle of approach. After carefully considering all these decisions, we are of the view that on the

substance of the definition of "private land" there is unanimity.

7. Yerlagadda Mallikarjuna Prasad Nayudu v. Somayya ILR 42 Mad. 400 (P.C.):10 L.W. 400 decided by the Privy Council approves Zamindar

of Chellapalli v. Somaya ILR 39 Mad. 341 ; 2 L.W. 117 expounding the scope of "private land" for purposes of the Estates Land Act. The Privy

Council approvingly cited the interpretation made in Zamindar of Chellapalli v. Somaya ILR 39 Mad. 341;2 L.W. 117 which is as follows:

The Subordinate Judge has found, and I agree with him, that the suit lands were never cultivated by the Zamindar as part of his home-farm lands,

and it seems to me that his treatment of them as Kambattam was merely colourable for the purpose of defeating the occupancy rights of the

tenants. In some parts of India, lands of this kind are known as Sir lands, and this is one of the terms mentioned in the definition. In Budlev v.

Bukhtoo 1869 3 N.W.P. 203 it was held that Sir land is land which a Zamindar has cultivated himself and intends to retain as resumable for

cultivation by himself even when from time to time he demises it for a reason. I think that this test may well be applied here, and that as the plaintiff

has failed to satisfy it, the appeal fails and must be dismissed with costs.

After extracting this passage, the Privy Council observed that the test contained in the extract was obviously suggested by S.185 of the Estates

Land Act and it was rightly applied by the Chief Justice. In Zamindar of Chellapalli v. Somaya ILR 39 Mad. 341;2 L.W. 117 there was an

elaborate consideration of the two terms "domain" and "home farm". Yerlagadda Mallikarjuna Prasad Nayudu ILR 42 Mad. 400 (P.C.):10 L.W.

400 was followed in Jagadeesam Pillai Vs. Kuppammal, . Wadsworth, who was then the Officiating Chief Justice, in his judgment, on behalf of the

Division Bench pointed out that the definition of "private land" in S. 3(10) read as a whole indicated clearly that the ordinary test for "private" land

is the test of retention by the landholder for his personal use and cultivation by him or under his personal supervision, though such land might be let

on short leases for the convenience of the holder, without losing its distinctive character. He also pointed out that it would be inconsistent with the

scheme of the Estates Land Act to treat as private, these lands with reference to which the only peculiarity is the fact that the landlord owned both

the varams in the lands and had been letting them out on short term leases. It

was pointed out that there must be something in the evidence either by way of proof of direct cultivation or by some clear indication of an intent to regard these lands as retained for the personal use of the landholder and his establishment in order to place these lands in the special category of private lands in which a tenant under the Tamil Nadu Estates Land Act did not acquire occupancy rights. In this judgment, reference was made to *Zamindar of Chellapalli v. Somaya* ILR 39 Mad. 341:2 L.W. 117 and adopting it as laying down the correct test of private land, it was observed as follows :

In ordinary English usage, the term domains or home-farm as is indicated by the judgment in *Zamindar of Chellapalli v. Somaya* ILR 39 Mad. 341;2 L.W. 117 would console land appurtenant to the mansion of the lord of the manor, kept by the lord for his personal use and cultivated under his personal supervision, as distinct from lands let to tenants to be farmed without any control from the lord of the manor other than such control as it incident to the lease. It seems to us that sub-Cl. (b) (i) of the definition is intended to cover those lands which come obviously within what would ordinarily be recognised as the domain at home-farm; that is to say, lands appurtenant to the landholder's residence and kept for his enjoyment and use. The home-farm is land which the landlord farms himself as distinct from land which he lets out to tenants to be farmed. This Cl. (i) therefore, is meant to include and signify those lands which are in the ordinary sense of the word home-farm lands.....It seems to us that the definition read as a whole indicates clearly that the ordinary test for "private" land is the test of retention by the landholder for his personal use and cultivation by him under his personal supervision. No doubt, such lands may be let on short leases for the convenience of the land-holder. Without losing their distinctive character; but it does seem to us to be inconsistent with the scheme of the Madras Estates Land Act, as amended, to treat as private those lands with reference to which the only peculiarity is the fact that the landlord own both the warams in the lands and has been letting them out on short term leases. There must, in our opinion, be something in the evidence either by way of proof of direct cultivation or by some clear indication of an intent to regard these lands as retained for the personal use of the landholder and his establishment in order to place these

lands in the special category of private lands in which a tenant under the Madras Estates Land Act cannot acquire occupancy rights.

These three decisions bring out clearly the purport of the expression "private land" which may either be domain or home-farm land. In the case of

the former, the essence of the matter is the intention on the part of the landholder to hold the land as his own for purposes of cultivation, though

actually he may not apply it to cultivation. Where he leases it out on short term basis, this will not be taken as inconsistent with his intention to retain

the land as his own for cultivation provided the leases are not of a character which will negate an intention to resume the land for his own purposes

and as his own. In the case of home-farm land, it is necessary, in order to establish the character, that the land should be directly cultivated by the

landholder. In the absence of such evidence, it cannot be said that the presumption under S.185 can be said to have been over-ridden.

8. Later in *Bandara Jogi and Others Vs. Sri Rajah Chintalapati Seetharamamurthi Rajah Bahadur Garu and Others*, *Yerlagodda Mollikarjuna*

Prasad Nayudu v. Somaya ILR 42 Mad. 400 : 10 L.W. 400 (P.C.), was followed. But in *Periannan v. A.S. Amman Kovil* AIR 1952 Mad. 323 :

64 L.W. Suppl. 1,(F.B.), two of the learned Judges who delivered the majority judgment considered that the definition of "private land" was

narrowly construed in the earlier cases and suggested a wider scope of the definition. The dissenting learned Judge, however, would adhere to the

view found expressed in the earlier judgments, that is to say, that a home-farm land as the expression itself self-indicates would be land directly

cultivated by the holder thereof and that this test is the only test applicable to home-farm land. The majority judgment did not agree with this view.

In *Chidambaram v. Santanaramaswami* AIR 1968 S.C. 1035, however, the construction of "private land" in the Estates land Act as done in

Yerlagadda Mollikarjuna Prasad Nayudu v. Somaya ILR 42 Mad. 400 : 10 L.W. 400 (P.C.) was adopted. To quote from that judgment:

In our opinion the correct test to ascertain whether a land is domain or home-farm is that accepted by the judicial Committee in *Yerlagadda*

Mollikarjuna Prasad Nayudu v. Somaya ILR 42 Mad. 400 : 10 L.W. 400 (P.C.) that is whether it is land which a zamindar has cultivated himself

and intends to retain as returnable for cultivation by himself even if from time to time he demises for a season. The legislature did not use the words

"domain or home-farm land" without attaching to them a meaning; and it is reasonable to suppose that the legislature would attach to these words

the meaning which would be given to them in ordinary English. It seems to us that the sub-Cl. (b), (1) of the definition is intended to cover those

lands which come obviously within what would ordinarily be recognised as the domain or home-farm, that is to say, lands appurtenant to the land-

holder's residence and kept for his enjoyment and use. The home-farm is land which the landlord cultivates himself, as distinct from land which he

lets out to tenants to be farmed. The first clause is, therefore, meant to include and signify those lands which are in the ordinary sense of the word

home-farm lands. The other clauses of the definition appear to deal with those lands which would not necessarily be regarded as home-farm lands

in the ordinary usage of the term ; and with reference to those lands there is a proviso that lands purchased at a sale for arrears of revenue shall not

be regarded as private lands unless cultivated directly by the landlord for the required period It seems to us that the definition read as a whole

indicates clearly that the ordinary test for private land is the test of retention by the landholder for his personal use and cultivation by him or his

personal supervision. No doubt, such lands may be let on short leases for the convenience of the land-holder without losing their distinctive

character; but it is not the intention or the scheme of the Act to treat as private those lands With reference to which the only peculiarity in the fact

that the landlord owns both the varam in the lands and has been letting them out on short term leases. There must, in our opinion, be something in

the evidence either by way of proof of direct cultivation by some clear indication of an intent to regard these lands as retained for the personal use

of the landholder and his establishment in order to place those lands in the special category of private lands in which a tenant under this Act cannot

acquire occupancy rights.

The judgment of the Supreme Court indicates how the test was applied to the facts in that case. The Supreme Court expected proof of such direct

cultivation by the landholder for the land to be private land. Since there was no such evidence forthcoming though the lands were leased out on

short term basis over a long period, the Supreme Court found that the tenants cultivated the land without break or change. It, therefore, considered

that the fact that there were periodical auctions of the lease rights need not necessarily deprive the tenants of the occupancy rights which they were enjoying. In other words, the Supreme Court indicated that the presumption that a land is ryoti land is not rebutted until the land is shown to have been directly under the cultivation by the landholder or that the land appurtenant to the landholder's manor or home was owned by him, and while, if at all, leasing out on short term basis, be evidenced an intention to resume the land for his own purposes thereby showing that he at all times asserted his intention to retain the character of the lands as domain land. It is not necessary in these appeals for us to decide T.S. Pl. P.

Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, overruled Perianan v. A.S. Amman Koil AIR 1952 Mad. 223 to

any extent. All that is necessary to decide for the purpose of these appeals is as to the character of private land and the test to be applied for that

purpose. We are not concerned with the wider aspect of the definition of "private land" which was the point of difference between the majority

opinion and the single learned Judge in Perlannan v. A.S. Amman Kovil AIR 1952 Mad. 223.

In the instant cases, applying the test as to the character of private land, we are of opinion that the Tribunal has not directed itself in approaching

the evidence in the proper manner. As we have already indicated, the three categories of evidence are the recitals in the sale deeds that the lands

were Pattukkattu lands, that some expenditure was incurred for agricultural labour for the years which we have already mentioned and that there

was oral evidence that after 1930 the lands were leased out on short-term basis. What the Tribunal has to consider is that if the land is domain land

and therefore private land, in order to sustain that character, evidence should be forthcoming to the effect that the contesting respondents or their

predecessors-in-title intended to own the land for purposes of cultivation, and the short term leases, if at all they gave, were indicative of their

intention to resume the land for the purpose of their own cultivation. If, on the other hand, the land is to be found as home-farm land, nothing short

of direct cultivation has to be proved. The Tribunal has not approached the question as to the character of the land from those stand points. We

may also observe that a mere recital in the sale deeds that the lands were Pattukkattu lands would not be indicative by itself that the landholder

himself cultivated the lands either by the own servants or by hired labour or that he intended to hold the lands as his own for the purpose of cultivation; in other words, that he intended to exercise domain over the private lands for purposes of his own cultivation. All that Pattukkattu would indicate is that the lands were cultivable. The evidence as to agricultural expenses incurred should be related to the lands in question. The Tribunal has noted in its order that there was nothing in the accounts indicative of the fact that the expenses relate to these lands. Without such a reference, the Tribunal will have to consider whether it would be of any value for the contesting respondents to rely on the accounts as to such expenditure. If leases on short term basis were relied on for the period subsequent to 1930, they would have to be examined whether they showed an intention on the part of the landholder to resume the land for his own cultivation. Finally, the Tribunal will have to see whether the overall effect of the entire evidence would be such as to outweigh the presumption under S.185 of the Estates Land Act, the policy of the section being that the land should be presumed to be ryoti until the contrary is established. On that view of the matter, we allow the appeals and remit the matter to the Tribunal for disposal in the light of this judgment. There will be no order as to costs in any of these appeals.