
(1963) 11 KL CK 0006
In the High Court Of Kerala
Case No : A.S. No. 353 of 1959

Bhaskaran Nair

APPELLANT

Vs

Travancore Devaswom Board

RESPONDENT

Date of Decision : 04-11-1963

Acts Referred:

Travancore-Cochin Hindu Religious Institutions Act, 1950 — Section 28(3)

Citation : (1964) KLJ 191

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : C.K. Sivasankara Panicker, for the Appellant; V.G. Sankaranaraya Pillai, for the Respondent

Final Decision : Dismissed

Judgement

S. Velu Pillai, J.—The suit was by the appellant, against the respondent, the Travancore Devaswom Board, to set aside an order of resumption Ext. P. 13 passed by the latter u/s 28(3) of the Travancore-Cochin Hindu Religious Institutions Act, 1950. The appellant's case was that the property in suit was granted to Areecheril family for past services rendered by it as "Velichapad" in Elankavu Bhagavathi Devaswom, that on the 16th Edavom, 1056, that family gave a hypothecation Ext. P. 8, and on the 8th Kumbhom, 1061, a usufructuary mortgage Ext. P. 7 to the appellant's tarwad, that the tarwad afterwards became full owner by lapse of time, and that the respondent passed Ext. P. 13 on the ground that the property was alienated contrary to the provisions of the Act. The suit was dismissed by the Subordinate Judge and hence this appeal. The first question for consideration is whether the grant was in the nature of a personal Inam for past services or was made for future services. Even on the averments in the plaint, it is clear that the services continued to be performed after the grant was made, which was a long time ago as may be inferred from Ext. P. 1 ozhuku of the year 1012 and Ext. P. 3 Vilangiper. The trend of the examination of P.W. 1 on behalf of the appellant was also the same, and to crown all, in a

statement Ext. P. 12(a) given by him before the Tahsildar on Devaswom Special Duty, he had admitted that the property was given on Service Inam to Areecheril tarwad for "thadivettu" service, but that he did not know whether the grantee was still continuing to perform the services and in it he had also prayed, that on resumption the property might be given to him on favourable terms. On the above, there is no room for doubt that the property was given not for past services or by way of personal Inam, but for continued performance of services subsequently to the grant. u/s 28(3) of the Travancore-Cochin Hindu Religious Institutions Act, 1950, "all alienations of Service Inam lands attached to specific services which have been or which may hereafter be made contrary to past usage shall be treated as null and void. The board shall have power to resume Service Inam lands attached to specific services if such lands are alienated or if the holders of such lands make default in the performance of the services." On the finding that the property in suit is Service Inam attached to specific services, the alienations made in favour of the appellant's tarwad have to be treated as null and void at the option of the respondent and the power of the respondent to resume the property in such circumstances cannot be denied.

2. But it was contended, that once the services had been abolished by the respondent or by Government its predecessor, the property, even though attached to specific services, became freed of such services ipso facto and that no resumption could be had on the ground that it is inalienable. There is no such limitation in Section 28(3). I do not understand the law to be, that once property is given for the continued performance of services in future and afterwards the services happen to be abolished, by such abolition and without more, the property becomes the absolute property of the grantee and lost to the grantor. On the contrary, as I conceive, the true rule ought to be that on the burden of services being lifted, the condition subject to which the grant was made ceased to operate and therefore the property itself became resumable at the instance of the grantor. Two decided cases were relied on in support of the contention of learned counsel. In Appayasami Naicker v. Midnapore Zamindari Company Limited (I.L.R. 44 Mad 575) decided by the Privy Council, property which was originally given on Palayam for military service was settled by Proclamation of the 1st December 1801, issued by the Government of Fort St. George in which the relevant words were these:

...Governor in Council of Fort St. George aforesaid, announces to the Palayagars and to all the inhabitants of their Palayams that it is the intention of the British Government to establish a permanent assessment of Revenue on the lands of the Palayams upon the principles of Zamindari tenures, which assessment being once fixed shall be liable to no change in any time to come, that the Palayagars becoming by these means Zemindars of their hereditary estates will be exempted from all military services and that the possession of their ancestors will be secured to them under the operation of limited and defined laws to be printed and published...

These are words of such wide amplitude, that not only the services were abolished but the property was settled on the grantee by the proclamation on a permanent basis. Similar was the case in Radhabai and Ramachandra Konher v. Anantray Bhagavant Deshpande (I.L.R. 9 Bom. 198) in which u/s 2 of Bombay Act II of 1863 it was provided with respect to "vatan" lands, "that such lands shall... be the heritable and transferable property of the... holders, their heirs, and assigns, without restriction as to adoption, collateral succession, or transfer." West J. commenting on this observed, that "such language must have been used with the intention of wholly freeing settled lands from official obligations... It is no longer affected with a liability on account of service; and unless as a family estate, subject to a special family custom... it has become in all respects, except its partial exoneration from land-tax, like the ordinary landed property of the district." No such provision exists or has been promulgated with respect to Service Inam lands of the character concerned in this case. In this view, the provisions of section 28(3) of the Act aforesaid, must have the fullest operation and therefore when the Act has declared the alienations to be void and the property to be resumable, the respondent was justified in passing Ext. P. 13. For these reasons, the appeal fails and is dismissed with costs to the respondent.