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**(1979) 01 MAD CK 0013**  
**In the Madras High Court**

C. Muthu Bhattar

APPELLANT

Vs

The Authorised Officer (Land Reforms)

RESPONDENT

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**Date of Decision :** 24-01-1979

**Acts Referred:**

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 83

**Citation :** (1979) ILR (Mad) 462 : (1979) 92 LW 212 : (1979) 1 MLJ 480

**Hon'ble Judges :** P.R. Gokulakrishnan, J

**Bench :** Division Bench

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## Judgement

P.R. Gokulakrishnan, J.—One Muthu Bhattar has filed this revision petition u/s 83 of the Tamil Nadu Land Reforms (Fixation of Ceiling on

Land) Act (LVIII of 1961) (hereinafter referred to as the Ceiling Act in this judgment) questioning the validity of the order passed by the

Authorised Officer (Land Reforms) Madurai, as Land Tribunal constituted under the Act.

1-A. On the basis of the return furnished by the petitioner herein u/s 8(1) of the Act, and on the materials collected through the field staff of the

department, a draft statement containing the particulars of all lands held by him as 6th April, 1960 was prepared, and it was published in

Supplement to Part III - No. 10 MM of the Tamil Nadu Government Gazette, dated 14th March, 1973 as required in Section 10(1) of the Act.

The draft statement was served on the petitioner on 22nd March, 1973. He filed a statement of objections to the draft statement on 19th April,

1974. The petitioner was heard in person on 21st May, 1973 and 2nd July, 1973 and during that time he filed documents, which have been

marked as Exhibits P-1 to P-7. Arguments were heard on 24th July, 1973 by the Authorised Officer, and the Authorised Officer, observing that

no notice u/s 9(2)(b) of the Act is necessary since the draft statement was prepared on the basis of the materials furnished by the party and the petitioner is not entitled to exclude 44.70 acres on the ground that ryotwari patta was granted under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act (XXX of 1963), held that the petitioner, has to offer surplus lands of an extent of 20.385 L.C. standard acres and that the required lands will be selected from his holding and final statements published u/s 12 of the Act. The order of the Authorised Officer further states that as regards the selection of surplus lands, a separate notice was being issued granting two weeks time to specify the details of surplus lands.

2. Aggrieved by the order of the Authorised Officer, the petitioner herein filed C.M.A. No. 451 of 1973 before the Land Tribunal, Madurai. The Land Tribunal confirmed the order of the Authorized Officer both on the question of issuing notice u/s 9(2)(b) of the Act and also on the question of excluding lands for which ryotwari patta was granted under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act (XXX of 1963).

3. Aggrieved by the decisions of the Authorities below, the petitioner was preferred the above civil revision petition.

4. Mr. Ratnam, the learned Counsel appearing for the petitioner took me through the orders of the Authorities below and also through the relevant provisions of the Act and the Tamil Nadu Inams (Abolition and Conversion into Ryotwari) Act (XXX of 1963), in order to substantiate his contentions to the effect that the Authorities below erred in not issuing a notice u/s 9(2)(b) of the Act and that they have gone wrong in including minor inam lands for which ryotwari patta was granted, while calculating the surplus lands.

5. Mr. K. Govindarajan appearing on behalf of the Additional Government Pleader contended that no notice u/s 9(2)(b) of the Act is necessary, inasmuch as particulars were furnished by the petitioner himself and that the Authorities below have correctly included minor inam lands for which ryotwari patta was granted in favour of the petitioner.

6. I have carefully gone through the relevant statutory provisions and also the orders of the Authorities below.

7. It is seen from the facts of the case that a draft, statement containing the particulars of the lands held by the petitioner as on 6th April, 1960 was

prepared and published from the materials furnished by the petitioner u/s 8(1) of the Ceiling Act and also on the material collected from the field

staff of the department. Section 9 of the Ceiling Act deals with cases where the party fails to furnish the return u/s 8 or where the party furnishes

incorrect or incomplete return under that Section. In such cases, the Authorized Officer may, by notice, require such person to furnish the return or

the additional particulars, as the case may be, within, the time specified in the notice, or within such further time not exceeding thirty days as the

Authorized Officer may, in his discretion, allow. Section 9(2)(a) of the Ceiling Act reads as follows:

Where any person on whom notice under Sub-section (1) has been served, fails to furnish the return, or the additional particulars, as the case may

be, within the time specified in that notice, or within the further time allowed by the Authorised Officer under Sub-section (2) the Authorised

Officer may obtain in such manner as may be prescribed the necessary information either by himself or through such agency as he thinks fit.

Section 9(2)(b) of the Ceiling Act reads as follows:

The Authorised Officer, shall, as soon as may be after obtaining the information under Clause (a), give to the person concerned a reasonable

opportunity of making his representation and of adducing evidence, if any, in respect of such information and consider any such representation and

evidence and pass such orders as he deems fit.

From the above provisions it is clear that the opportunity contemplated in Section 9(2)(b) of the Ceiling Act is only in respect of cases where the

party does not furnish any information u/s 8 of the Act. Admittedly the petitioner has furnished information and a statement was prepared on the

basis of the return filed by him u/s 8(1) of the Ceiling Act. Hence the argument of Mr. Ratnam that the failure to give opportunity to the petitioner to

make his representation, u/s 9(2)(b) of the Ceiling Act is fatal to the case, cannot be appreciated, inasmuch as the draft statement was published on

the baste of the return furnished by the petitioner u/s 8(1) of the Ceiling Act. In such cases, I am of the view, the provision in Section 9(2)(b) of the

Ceiling Act need not be invoked.

8. The next contention of the petitioner, which assumes importance, is with regard to the 44.70 acres of lands. These lands, according to the petitioner, were minor inam lands and a ryotwari patta was granted therefore under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, XXX of 1963. The petitioner opposes the inclusion of these lands in his holding on the ground that they will neither come under the definition ""to hold"" nor under the definition ""full owner"" contemplated in the Act. If these lands are excluded from his holding, the petitioner will not be affected by the Act and there is no need for him to surrender any land.

9. Admittedly, the abovesaid lands originally were granted as an inam for rendering service, called the ""sthanikam and archaka service"". By virtue of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, XXX of 1963, a ryotwari patta was issued to the landowner in this private capacity with a condition of rendering service. As per Section 6(17) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the items of land included u/s 5 of the Act (Ceiling Act) in the draft statement constitute "religious endowment" to the temple concerned, and the petitioner can hold and enjoy those lands only so long as he renders the prescribed services.

10. Section 50 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, XXX of 1963 reads as follows:

(1) Notwithstanding anything contained in the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Madras Act LVIII of 1961) but subject to the provisions of Sub-section (2) the authorised officer shall in the fixation of the ceiling area of any person under that Act exclude any inam land.

(2) As soon as may be after the ryotwari settlement is brought into force in any land referred to in Sub-section (1) and after the grant of the ryotwari patta in respect of such land to any person in accordance with the provisions of this Act, the authorised officer shall calculate or recalculate the ceiling area of such person and in so calculating or recalculating the authorised officer shall take into account the extent of the land in respect of which a ryotwari patta has been granted to such person under this Act.

(3) For the purposes of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Madras Act LVIII of 1961) any ryotwari patta

granted under this Act shall be deemed to have taken effect on the 6th day of April, 1960 and for the purposes of calculating the standard acre

under that Act "land revenue" shall in respect of the land referred to in Sub-section (1) means the ryotwari assessment payable in pursuance of the ryotwari settlement referred to in Sub-section (2).

From the provision in Section 50(2), stated above, it is clear that after the grant of ryotwari patta to any person in accordance with the provisions

of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, LVIII of 1961, the authorised officer shall calculate or recalculate the ceiling

area to such person and in so calculating or recalculating the authorized officer shall take into account, the extent of the land in respect of which a

ryotwari patta has been granted to-such person under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, XXX of 1963.

Relying on the provision, the learned additional Government Pleader contended that the Authorities below have correctly included the 44.70 acres

in the holding of the petitioner.

11. Section 50(2), aforesaid, no doubt states that the Authorised Officer shall take into account the extent of lands for which a ryotwari patta has

been granted, in calculating the ceiling area. But, in my view, if such lands are taken into consideration for fixing the ceiling such act of the authority

concerned must be in conformity with the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. Section 5 of the

Ceiling Act deals with fixation of ceiling on land holdings. In that section it has been specifically stated that the land "held" by a member has to be

taken into account. Section 7 of the Ceiling Act states:

On and from the date of commencement of this Act no person shall, except as otherwise provided in this Act, but subject to the provisions of

Chapter VIII, be entitled to hold land in excess of the ceiling area....

Section 3(19) of the Ceiling Act states:

To hold land" with its grammatical variations and cognate expressions means to own land as owner or" to possess or enjoy land as possessory

mortgagee or as in one or more of those capacities.

Section 3(25) of the Ceiling Act reads:

"Landowner" means the owner of the land let for cultivation by a tenant and

includes the heirs, assignees, legal representatives of such owner or persons deriving rights through him.

Section 3(33) of the Ceiling Act states:

owner""-

(a) means-

(i) any person holding land in severalty or jointly or in common under a ryotwari settlement or in any way subject to the payment of revenue direct

to the Government; or

(ii) a landholder as defined in the Madras Estates Land Act, 1908 (Madras Act I of 1908), or a ryot as denned in that Act, or

(iii) as inamdar not being a landholder denned as aforesaid; and

(b) includes-

(i) full owner or limited owner, or

(ii) the lessee of any lease-hold village or his heirs, assignees, legal representatives or persons deriving rights through him.

Section 3(16) of the Ceiling Act reads:

"full owner" means a person entitled to the absolute proprietorship of lands.

Section 3(28) of the Ceiling Act states:

"limited owner" means any person entitled to a life estate in any land and includes persons deriving rights through him.

Explanation - A person who has a right to enjoy the land during his lifetime shall be deemed to be a limited owner notwithstanding that he has no power to alienate the land.

Section 3(21) of the Ceiling Act states:

"intermediary" means any person who, not being an owner or a possessory mortgagee, has an interest in land, and is entitled, by reason of such

interest, to possession thereof, but has transferred such possession to others.

12. Mr. Ratnam the learned Counsel for the petitioner, submitted that the petitioner is neither the owner of the lands in question, nor a possessory

mortgagee, nor a tenant, nor an intermediary so as to come under the definition ""to hold"" u/s 3(19) of the Ceiling Act. It is only for the service he

has to render, the petitioner has been granted ryotwari patta in respect of the lands in question, and once the service is not continued or not

performed, the Hindu Religious and Charitable Endowments Board has power to resume the lands in question.

Section 8(2) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, XXX of 1963 reads as follows:

Notwithstanding anything contained in Sub-section (1), in the Madras Hindu Religious and Charitable Endowments Act, 1959 (Madras Act XXII

of 1959), and in the Madras (Transferred Territory) Incorporated and Unincorporated Devaswoms Act, 1959 (Madras Act XXX of 1959) the

following<sup>1</sup> provisions shall apply in the case of lands in an iruwaram minor inam granted for the support or maintenance of a religious institution or

for the performance of a charity or service connected therewith or of any other religious charity-

...

(ii) in the case of any other land, the institution or the individual rendering service shall, with effect on and from the appointed day, be entitled to a

ryotwari patta in respect of that land.

Section 8(5) reads as follows:

In the case of a minor inam held immediately before the appointed day by an individual on condition of rendering service to a religious, educational

or charitable institution, the grant of ryotwari patta under Sub-section (1) or (2) shall be subject to the provisions of Section 21.

Section 21(7) of Act XXX of 1963 reads as follows:

(a) For so long as the service-holder renders the service, he shall be entitled to occupy permanently the lands in respect of which he is entitled to a

patta u/s 8, subject, however, to the payment of the assessment fixed u/s 16 or u/s 16-A as the case may be in respect of such lands.

(b) If the service-holder "fails to render the service, the prescribed officer shall, after such inquiry and after such notice to the service-holder may

be prescribed in this behalf, notify such failure in such manner as may be prescribed. He shall then declare that the service-holder's right to occupy

permanently the land under Clause (a) shall cease and determine, and the institution shall be at liberty to make such arrangement as it thinks fit "for

the performance of the service and shall be entitled to hold the land as its absolute property subject, however, to the payment of the assessment

fixed therefore u/s 16 or u/s 16-A as the case may be.

Explanation I. - For the purposes of this section,-

(i) service-holder includes his heirs;

(ii) non-performance of the service due to illness or other temporary disability shall not be deemed to be "failure to render service, provided that

the service-holder makes alternative arrangement for rendering the service during the period of such illness or of other temporary disability.

Explanation II.--For the purposes of Sub-section (4) "'land revenue'" means the ryotwari assessment including the additional" assessment, water-

cess and additional watercess.

From the abovesaid provisions, it is clear that if the service-holder fails to render the service, the institution shall be at liberty to make such

arrangement as it thinks fit for the purposes of service and shall be entitled to hold the land as its absolute property.

13. On the basis of the above statutory provisions it was contended that service inam lands in respect of which a ryotwari patta has been granted,

cannot be taken into account in calculating the ceiling area under the Ceiling

14. Mr. Ratnam has cited certain decisions to fortify his contentions. The first of such decisions is the one reported in The Radhaswami Charitable

Society and Another Vs. The Authorised Officer Land Reforms, , wherein Ramanujam, J., has held:

The intention of the Legislature in defining "'limited owner'" is to take in only such persons who held lands with powers of alienation, etc., for a

duration of their life and not any life interest, whatever be its character.

It is true, the will gives a right of alienation, but such right of alienation is only limited to the disposal of the property for discharging the debt

referred to in the will. Such a limited power of alienation falls short of a full estate, and she had no power to deal with the corpus of the estate

except to the limited extent indicated above." Subject to the right of the testator's widow to enjoy the property during his lifetime, the property has

vested in favour of the Society even on the death of the testator. The Radhaswami Charitable Society and Another Vs. The Authorised Officer

Land Reforms, , and it has become the owner of the property, subject to the rights of enjoyment, etc., granted in favour of the testator's widow.

The directions given by the testator under the will in this case attracted the principle of the decision in Lakshmana Nadar and Others Vs. R.



Ramier, , and therefore, it has to be held that the interest conferred (on) the testator's widow, is more like a limited estate known to English law

than like a widow's estate's known to Hindu Law.

15. It has therefore, to be held in this case that the widow of the testator who is entitled only to a right of enjoyment over the income of the

properties and not entitled to any portion of the corpus, which stands vested with the society as on the date of death of the testator, is not a limited

owner as defined in the Act, and as such she cannot be held to be a person ""holding"" the land in question as contemplated in the definition of to

hold"".

The next decision cited by Mr. Ratnam is the one reported in *Neti Anjaneyalu Vs. Sri Venugopal Rice Mill (Limited)*, , which was decided by a

Full Bench of our High Court. Schwabe, C.J., has observed in that decision as follows:

In my judgment the sale of such property is opposed to the nature of the interest affected and also is contrary to public policy. The right to enjoy

the property is as long as the inamdar renders services in the performance of which the public have an interest. If the inamdar sold the property it is

obvious that he would in all probability no, longer perform the services; and further, it is quite opposed to the nature of his interest and duty

(namely, that he should enjoy the produce of the land as salary for the public services he has to render) that he should sell it or alienate it, leaving

himself without the means subsistence and without further interest in the place or in the performance of the services. It is also to be observed that if

the property were sold in *Neti Anjaneyalu Vs. Sri Venugopal Rice Mill (Limited)*, , the purchaser would get no title of any value, for at any

moment the property might revert to the inamdar or the Government, as the case may be, when the inamdar ceases to render such services.

Further, under Order 56(1) of the Standing Orders of the Board of Revenue the Government can resume possession of a charitable or religious

inam immediately on alienation.

16. The next decision cited by the learned Counsel is the one reported in *V.E. Ramanathan Chettiar Vs. Kalidasa Kavandan and Another*, , wherein

Venkataramana Rao, J., has stated:

A mortgage of a temple service inam land is invalid as opposed to public policy, at

any rate where the mortgage does not provide for "payment to the institution or in support of the service a sum not less than the net assessment of the land" as contemplated by Standing; Order No. 54 Clause (2) of the Board of Revenue.

In the decision reported in Angadi Masumayya Vs. The Official Receiver, , a Division Bench of our High Court has stated thus:

The learned Judges also in Neti Anjaneyalu Vs. Sri Venugopal Rice Mill (Limited), , have indicated their view that if the lands are alienated the

interest of the holder, and of those for whom he should perform the service will be prejudiced. It seems to follow from this that if the lands are to

go out of the control of an official such as the Official Receiver - in this case it must be remembered that the Official Receiver is a Hindu while the

insolvent is a Mahomedan - the performance of the services must obviously be in peril. The whole trend of the authority is that these lands not only

cannot be alienated, but cannot be transferred from the holder to an official such as the Official Receiver.

In the decision reported in Gopal Naidu v. Special Tahsildar for Land Acquisition N.P., Madurai (1974) 87 L.W. 67, a Bench of our High Court-

considering a grant of land for paricharakam service, the conclusiveness or otherwise of an admission by the inamdar describing himself as

melwaramdar and the alienability of the land, held : "The second claimant, appellant in App. No. 769 of 1967 is the alienee of both melwaram and

kudiwaram regarding a portion of the acquired property. It is on that basis that he claims a portion of the compensation. The inam was personal

and was inalienable as it was granted for the performance of paricharakam service. The Court below failed to consider the contention timed on

behalf of the Devasthanam that the grant being personal for the performance of paricharakam service in the temple, it was inalienable and that the

alienee does not get any title. That a personal service inam is inalienable is well settled. In Neti Anjaneyalu Vs. Sri Venugopal Rice Mill (Limited), ,

it was held that a personal inam for public service is not a property that is liable to attachment u/s 60, Civil Procedure Code. It is pointed out that

where the land is personal inam for public service, u/s 6(h) of the Transfer of Property Act, it is opposed to public policy and the transfer cannot

convey any title. In Ramakrishamma v. Venkatasubbiah (1934) 40 L.W. 918 :

(1934) 68 M.L.J. 46 : ILR (1935) Mad. 389 : AIR 1935 Mad.

252, it was held that the land burdened with the performance of a service of a public nature is inalienable being opposed to public policy and that

Dasabandam inams being burdened with a, service of a public nature are inalienable and cannot be sold in execution of a decree against the

inamdar. In Masumayya v. Official Receiver, Kurnool 55 L.W. 640 ILR (1943) Mad. 349 : (1942) M.L.J. 504 : AIR 1943 Mad. 72, the

question "arose whether, on the adjudication of the holder of a certain inam as an insolvent, the inam land would vest in the Official Receiver. The

question was answered in the negative, holding that such land not only could not be alienated, but could not be transferred from the holder to the

Official Receiver. In Ramanathan Chettiar v. Kalidasa Kavandam (1934) 40 L.W. 918 : (1934) 68 M.L.J. 46 : ILR (1935) Mad. 389 : AIR 1935

Mad. 252, it was held that the mortgage of a temple service therefore, invalid. The counsel appearing for the second claimant, who claims to have

acquired title as an alienee from the descendants of the original grantee, has no valid title to the acquired property and is, therefore, not entitled to

claim a share in the compensation.

17. An extent of 44.70 acres of land included by the authorities below in the holding of the petitioner were minor inam lands and a ryotwari patta

was granted to the petitioner under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, XXX of 1963. The petitioner

opposed the inclusion of these lands in his holding on the ground that he can enjoy the lands only so loner as he continues to render services of

sthanikam and archaka. Even though patta has been granted in the name of the petitioner, he has not paid the compensation specified in the Act to

enable him to become the absolute owner of the lands. Therefore, the petitioner prays that these lands cannot be included in his holding and the

ceiling area calculated. The decisions referred to above clearly establish the inalienable nature of inam lands granted for rendering service.

Admittedly the lands measuring 44.70 acres are service inam lands, even though patta has been granted in favour of the petitioner herein. Inasmuch

as these 44.70 acres of lands are inalienable, they cannot be considered as lands of a person who is entitled ""to hold"" the same as provided in

Section 7 of the Ceiling Act. The lands of this nature held by a person cannot

come under the definition of Section 5(19) of the Ceiling Act, since he, who is holding such service lands, can be considered neither the owner, nor a possessory mortgagee nor a tenant, nor an intermediary. The definition of "owner" in Section 3(33) of the Ceiling-Act will not also apply to a person who holds such service inam lands. The decisions 1 referred to above support this view in toto, and as such the inclusion of 44.70 acres of land for the purpose of calculating the ceiling area of the petitioner's holding, is not correct.

18. In these circumstances, the revision is allowed holding that the 44.70 acres of land enjoyed by the petitioner as service-holder, should not be taken into account for the purpose of fixing the ceiling area of the petitioner's holding. There will be no order as to costs.