
(1959) 04 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No's. 41 and 42 of 1957

C.V. Rajagopalachariar

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 15-04-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Madras Land Revenue (Surcharge) Act, 1954 — Section 5

Citation : AIR 1960 Mad 543

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Judgement

(1) These petitions are filed under Art. 226 of the Constitution to call for the records relating to the orders of the District Collector of Tanjore in R.

C. No. 26411/56-M1. and R. C. No. 37193/56-M.4 and the quash orders passed thereon 17-5-1956 and 26-9-1956 respectively.

(2) The petitioner is a ryotwari pattadar owning about 250 acres of land in Edayur and Keepalarumazhi villages in Thiruthuraipoondi taluk, Tanjore

District. He also owns lands in south Arcot and Chingleput Districts. The total land revenue assessed on his lands is Rs. 1691-9-6. This

assessment was based on the ryotwari settlement effected in 1924. In 1954 the State Legislature passed the Madras Land Revenue Surcharge Act

XIX of 1954 enabling the Government to levy a surcharge on a landholder who was liable to pay a sum exceeding Rs. 500 as land revenue per

year. That Act was followed by another Act XXX of 1955 which provided for the levy of an additional surcharge.

The result is that in addition to the ordinary assessment of land revenue payable by a landholder there was an additional tax levied in respect of

lands held by a pattadar who paid more than Rs. 500 by way of land revenue. The petitioner filed a declaration of the extent of lands held by him

in the state and the land revenue payable in respect thereof before the Tahsildar, Tiruthuraipoondi on 7-3-1955. Under S. 5 of Act XIX of 1954,

he was provisionally assessed to surcharge at Rs. 502-1-0 on 27-4-1956 and notice of the provisional assessment was served upon him allowing

time for filing objections thereto. No objection was, however, filed within the time allowed and the authorities thereupon proceeded to make a final

assessment on 17-5-1956.

A demand followed which required the petitioner to pay a sum of Rs. 502-1-0 within 7 days from the date of service of the notice. That

assessment was for Fasli 1364. In respect of the next fasli no declaration was filed by the petitioner and he was provisionally assessed by way of

surcharge in a sum of Rs. 502-1-0 adopting the previous year's figures. In response to the notice of the provisional assessment the petitioner filed

objections. That covered the objection to the assessment of the earlier fasli. In the objections the petitioner did not question the correctness of the

levy but only challenged the validity of the Land Revenue Surcharge Acts.

In the meanwhile the Collector proceeded to take steps for recovery of the land revenue surcharge due from the petitioner for Fasli 1364.

Thereupon the petitioner filed the two petitions for the issue of writs of certiorari to call for the records relating to the assessment of surcharge for

the two Faslis 1364 and 1365 and for quashing the orders relating to the levy.

(3) In support of the petition an affidavit has been filed by the petitioner. Therein he has referred to the fact of phenomenal ravages of nature like

the cyclone, drought, pest and unprecedented rains affected the Tanjore District in the years 1952 to 1956 and that his lands yielded very little

income during those years. The petitioner had applied to the Government for remission of kists in accordance with the provisions of Board's

Standing Orders Nos. 13 and 14 while remission was granted for several persons, it is the complaint of the petitioner that none was granted to him.

That was by reason of G. O. No. 580, Revenue, dated 26-2-1953 which directed that the benefit of the remission of land revenue should not be

given to pattadars in a taluk paying in all an annual assessment of more than Rs.100 and to persons who were assessed to Income Tax.

The petitioner complains that this Government Order is discriminatory and unjust and that he would be entitled to a remission like other pattadars in

respect of the years where there had been failure of crops due to natural causes. Under the explanation to S. 3 of the Madras Land Revenue

Surcharge Act of 1954 the land revenue remitted is not deemed to be a land revenue payable for the purpose of the section. If therefore, the land

revenue had been remitted as according to the petitioner it should have been, there would be no occasion for a levy of surcharge. But the petitioner

not having been given remission by virtue of G. O. No. 580 of 1953, he would be liable to pay not merely the full land revenue but also a

surcharge as well. In the petition, therefore, both the validity of the Government Order 580 of 1953 as well as the validity of the two enactments of

1954 and 1955 levying surcharge are attacked. There is also a further complaint in the petition in regard to the levy of a cess under S. 78 of the

Local Boards Act.

(4) On behalf of the petitioner it is first contended that the Madras Acts XIX of 1954 and XXX of 1955 are invalid for two reasons. The first is

that as under the ryotwari system the land revenue assessment is fixed till the next settlement is effected, it would not be open to any authority to

increase the land revenue during the subsistence of the settlement. I already referred to the fact that the previous ryotwari settlement took place in

the year 1924 and it is admitted that till this date no fresh settlement had been effected although the practice has been to effect a settlement once in

30 years. Under the notification issued by the Government regarding settlement of ryotwari lands in the year 1924, revenue was fixed at a certain

rate. It is claimed that fixation of revenue amounts to engagement by the Government with the owners of the lands and binding on either party so

that it would not be open to the Government to levy any further tax except by way of revision of the ryotwari settlement.

(5) Section 3 of the Madras Land Revenue Surcharge Act XIX of 1954 states:

Every landholder who is liable to pay a sum exceeding Rs. 500 for fasli is liable to the Government in respect of lands held by him in the State and

shall pay to the Government for that fasli a surcharge in the land revenue payable by him in respect of all lands held by him at the following rates.

Section 4 of the Act makes a surcharge payable by the landholder recoverable as

land revenue. Section 5 invests the Tahasildar of the taluk, in which the landholder holds lands, with a power to call for opinion regarding the extent of the property. Section 7 gives the power to make rules.

Act XXX of 1955 was enacted to provide for a further surcharge on the land revenue assessment at the rate. Section 3 of that Act authorises a levy of surcharge. Section 4 makes that surcharge recoverable as a land revenue. Section 5 enables the distribution of the additional surcharge amongst the local authorities in accordance with the rules. Section 6 gives the power to make rules.

The word "surcharge" implies an excess or additional burden or amount of money charged. Therefore, a surcharge of land revenue would also

partake the character of land revenue and should be deemed to be an additional land revenue. Although S. 4 of the two enactments referred to

above only deems it to be recoverable as a land revenue it is manifest that the surcharge would be a part of the land revenue. The effect of the two

Acts would be, therefore, to increase the land revenue payable by a landholder to the extent of the surcharge levied. If therefore, a surcharge levy

has been made, the Government would be enabled to collect a higher amount by way of land revenue from a ryotwari pattadar than what was

warranted by the terms of the previous ryotwari settlement. The question to be decided is whether such an increase of land revenue in a ryotwari

village could be validly made before effecting a fresh ryotwari settlement.

(6) Mr. V. C. Viraraghavan, the learned advocate for the petitioner, referred to the decision in *Bell v. Municipal Commissioner for the State of*

Madras, ILR 25 Mad. 457 for the position that the assessment on lands was by virtue of prerogative which has been understood to lie within

certain limits. In this connection reference was made to the observations of Bhashyam Aiyangar J. It was stated that the Crown had according to

the common law of India certain prerogatives notably the prerogative of imposing by an executive act assessment on lands and varying the same

from time to time. The nature and incidence of the ryotwari system has been considered in *Madathapu Ramayya v. Secretary of the State*, ILR 27

Mad. 386.

In that case the appellant had put up a shed and a small construction of a land which is part of a public highway. The Government relying upon the

provisions of the Revenue Recovery Act, 2 of 1864 imposed on him a prohibitory assessment. One of the items claimed in the action was for the

refund of the amount collected by way of prohibitory assessment. It was held that the basis of the land revenue was that the person from whom it

was collected had an interest in the land and if a person was trespasser there would be no occasion for levying the land revenue, as the land in

respect of which he had committed trespass could not be said to be legally owned by him. It was, therefore, held that the provisions of the

Revenue Recovery Act of 1864 could not apply to that case. While considering the case whether the trespasser over a land could be made liable

to pay land revenue by way of prohibitory assessment the learned Judges had to consider the features of the ryotwari system. Subramania Aiyar J.

adverting to the fundamental principles governing the assessment and collection of land revenue in ryotwari areas observed at page 389 as follows:

It may not perhaps be superfluous to point out that in the actual exercise of the prerogative of the Crown above referred to, the Crown is not

supposed to proceed without any regard to definite and well-established principles; for neither in olden times nor now, has the Crown been held

entitled to more than a fixed share of the produce--be it the theoretical one-sixth of the Hindu writings or the half-nett again and again proclaimed

by the present Government as the share it takes or some other; S. 58 of the Revenue Recovery Act having been enacted in order to save the

Crown from endless litigation in courts to which but for such a provision it would be exposed, having regard to the intricate details necessarily

incident to a system of assessment, involving in theory at least the ascertainment of the produce of every acre of land in the country and the

commutation of the crown's share thereof with reference to market prices for a definite period such as the usual 30 years for which settlement

money rates are fixed.

(7) In *Bala Surya Prasada Row v. Secretary of State*, ILR 40 Mad. 886 : AIR 1917 PC 42, the Privy Council referred to the practice under the

ryotwari settlement to make periodical settlements with ryots whereby the Government share in the produce was computed and the lands were

separately classified and held that the actual payment was incapable of increase for which settlement was made. In *Secretary of State v.*

Ramanujachariar, ILR 48 Mad. 282 : AIR 1935 Mad 355, it was held that when once a ryotwari land was classed as dry under a settlement for a period of 30 years such a land cannot during that period be reclassified as wet and if a demand was made by the Government for increased assessment such a demand was ultra vires.

A suit to declare such an assessment as illegal and to obtain a refund of the amount levied was therefore held maintainable and not barred by Sec.

58 of the Revenue Recovery Act. The matter was again considered in Echikan Charakare Kelu Nair Vs. The Secretary of State for India in

Council, . In that case Government sought to levy increased assessment in respect of certain lands known as Kumiri lands during the subsistence of

a ryotwari settlement. The learned Judges held that a notification by which the Government makes a ryotwari settlement for 30 years was binding

on the Government and that it would not be open to them to increase or enhance the rate fixed under the settlement during the period of 30 years

for which the notification was made.

The learned Judges referred to the nature of the ryotwari tenure and held that the origin of the power to levy assessment to areable land was by

virtue of a prerogative of the Crown and that in the actual exercise of the prerogative the Crown could not proceed without any regard to definite

and well-established principles one of them being that the rate of assessment fixed at a particular settlement could not be increased during the

subsistence of that settlement. Form the principles laid down in the cases referred to above it is contended that such rates fixed at the time of the

previous ryotwari settlement in the year 1924 could not be altered during the subsistence of the settlement.

It was then urged that it would not be open even to the legislature to increase that rate under the guise of a revenue surcharge of land revenue. The

validity of this contention depends upon the nature of the land revenue assessments and the power of the legislature to vary during the subsistence

of a prior ryotwari settlement.

(8) The incidence of a ryotwari tenure has been considered in a number of decisions. That was a system conceived for the purpose of collection of

land revenue without the aid of a middleman, the ryots being treated as proprietors of their holdings liable to pay assessment directly to the

Government. The features of a ryotwari settlement have been considered in *S. Gopalan Vs. State of Madras*, . Under that system the Government does not purport to grant any title deed to the proprietor. What is given is only a patta, which has been held to be, not a title deed, but only a bill or an evidence of the fiscal arrangement between the ryot proprietor and owner. Although no title deed as such is granted to the pattadar, there is no doubt that the interest of the pattadar is a proprietary over the soil. The Madras Land Encroachment Act III of 1905 which was passed to counteract the decision in ILR 27 Mad. 386 incidentally declared what is Government property. Section 2 referred to the property of the Government and among the properties which are excepted from the ownership of the Government are lands held under a ryotwari tenure. That would indicate the recognition by the legislature that the pattadar is the owner of the property. The provision of the Madras Revenue Recovery Act II of 1864 is consistent only with the pattadar being such owner. The term "landholder" had been defined as to comprise a holder of land under ryotwari settlement. Section 2 enacts that the land was security for public revenue. One can conceive of the property being a security for a liability only if the property belongs to the person liable and not to the person to whom the debt is due. Section 26 refers to the land as the defaulter's land. Section 42 provides that in a case where the land was sold for arrears of revenue any balance remaining after the discharge of the arrears should be paid over to the defaulter. These provisions indicate that the full ownership of the land is vested in the ryotwari proprietor. Therefore, the levy of an assessment on such property could not be held to be in the nature of a rent though in origin the assessment was based on a share of the produce. To call such a levy as rent would imply that the Government had an interest in the property. I have already indicated that the Government have no interest as owner of the property, but their interest is only by way of security for the amount of assessment payable. In such a case the assessment cannot be held to be a rent which was the subject matter of a contract between the parties but only a tax. In *Secretary of State v. Venkatapati Raju*, 23 Mad L. J. 746, it was held that the land revenue is a tax imposed by the virtue of preogative of the state and that the liability to pay land revenue did not rest on a contract or any

relation resembling the contract. Under that system soil itself is taken and the assessment is fixed on the land and does not depend on the nature of the crops grown. The origin of the right to levy such a tax was the prerogative of the Crown. That prerogative right has been followed by legislation, viz., the Madras Revenue Recovery Act II of 1864. The lines on which the ryotwari assessment was made were accepted by that enactment and a machinery was provided for its levy and collection.

The actual levy was the subject matter of delegation to the Board of Revenue. But such delegation was within permissible limits. The delegated authority viz., the Board of Revenue fixes the assessment on the basis of the income from lands, half the net income being taken as the guiding principle in the matter of assessment. A settlement once made would ordinarily be good for a period of 30 years. That is to say, that by an executive act (or by virtue of any prerogative that it may possess) it would not be open to the Government to increase the assessment during the period covered by the settlement.

But that could not, however, prevent the legislature from increasing the assessment by an enactment. Venkatasubba Rao J. in *Echikan Charakare*

Kelu Nair Vs. The Secretary of State for India in Council, recognises that principle when he stated at page 594 (of ILR Mad): (at p. 1138 of AIR), thus:

The question in the present case is, is there any such engagement between the Government on the one hand and the ryotwari holders on the other.

If there is, the Government's action is illegal for they do not rely upon any status in their favour.

(9) A distinction should, therefore, be made between a case where the Government by an executive act tries to enhance the land revenue in

respect of a ryotwari holding during the currency of a settlement and before its revision, and a case where the legislature steps in to add to the

burden on the subject. In the former case the attempt of the executive authority would be illegal for two reasons, (1) that the incidence of the

ryotwari tenure itself is that the land revenue would not be liable for enhancement or change during the currency of a settlement at which the rate was fixed.

Secondly the Board of Revenue or the executive Government being only a

delegate for fixing the rate at the time of settlement would not have the power to increase it at any intermediary stage. But those considerations cannot apply to a legislature which was plenary powers of legislation.

Limitation placed upon the power of the Board of Revenue would not apply to the case of a legislature. Both under the Government of India Act

of 1935 as well as under our constitution the State Legislature possess full powers to levy a tax in regard to agricultural lands. Act XIX of 1954

and Act XXX of 1955 being passed by the legislature could not therefore, be assailed on the ground that if such an act had been done by the

Executive Government or the Board of Revenue it would be invalid as contravening the terms of the settlement.

(10) It was then contended that the Act being discriminatory and contravening Art. 14 of the Constitution was void. Section 3 of Act XIX of 1954

exempted landholders paying less than Rs. 500 as revenue from surcharge. In fixing the rates the slab system was adopted under which the rate of

surcharge progressively increased from two annas to eight annas on each rupee of the land revenue paid. It is contended that this section is

discriminatory in its operation as a distinction has been made between rich and poor people and as the levy of the tax was different for different

classes of owners. I cannot see how the classification for taxation on the basis of the personal qualification which is a most universal should be held

to be illegal.

(11) This question appears to have arisen in American Courts. In Willis on Constitution law it is stated,

The Supreme Court permits a wider discretion in classification under the power of taxation, if possible, than it does under the police power. One

reason for this undoubtedly is the urgent need for revenue by the various governmental agencies. A State does not have to tax everything to tax

something. It is allowed to pick and choose districts, objects, persons, methods, and even rates for taxation if it does so reasonably..... All it

says is that the States shall not deny to any persons within their jurisdiction the equal protection of the laws." In Rettschaefer on Constitutional Law

at page 672 it is observed:

It is common feature of inheritance and estate taxes to graduate the rates progressively and to adjust the rates on the basis of the relationship of

the decedent to those who succeed to his property. the classifications involved in those features have been invariably held not to violate the equal protection clause. Nor does that clause prohibit a State from directly or indirectly imposing a proportionately larger tax on the succession to a residuum of a large estate than a smaller estate, although the residuary estate and residuary legacy be equal in each instance..... The equal protection clause permits a State to establish reasonable exemptions from these taxes. There have been but few classifications resulting from the provisions of..... The principles employed in determining the validity of progressive rates and exemptions in connection with inheritance and estate taxes have also been applied to State income taxes. The equal protection clause has invariably been held to permit progressively graduated income taxes, the exemption of some of the income of all tax payers, and the exemption of all the income of those classes for whose exemption there exists a reasonable basis. The same features are almost invariably held not to violate a State constitutional requirement that taxes be uniform upon the same class of subjects.....

(12) On the principles stated above the Land Revenue Surcharge Acts of 1954 and 1955 could not be validly challenged as contravening Art. 14 of the Constitution.

(13) Mr. V. C. Viraraghavan next contended that during the years 1952 to 1956 there was a total failure of crops in the lands owned by the petitioner and that no land revenue, much less a surcharge, should be levied as if levied, they would exceed the income from the property. As the ryotwari assessment has always been considered to be based on a share of the income it was contended that when there was no income there should be no tax. Support for this contention was sought in the observations of Bhashyam Aiyangar J. in ILR 27 Mad 386 where the learned Judge stated:

Fourthly, that the immemorial and common law prerogative of the Crown in India is only to the Rajabhagam or King's share in the produce of the land and the land revenue or assessment now levied on land represents the King's share in the produce and the Courts have no jurisdiction to question the rate of share that the executive Government may fix at the periodical revision of assessment but a share of the produce--however high

the share or rate may be in relation to the total produce--cannot exceed the produce.

It is contended that as the levy of land revenue and surcharge would have an effect of exceeding the produce in the years when there was no crop

on the land at all, the assessment during the years complained of was illegal. It is difficult to accept this argument. The ryotwari assessment,

although it is fixed on the basis of a share of produce, is not an assessment to be made every year commensurate with the produce of the land. It is

not analogous to the waram system under which the lands are cultivated in the Tanjore Dt. whereby the landlord and tenant each takes a fixed or

agreed share of the produce.

The procedure at the time of a ryotwari settlement has been set out in the Board's Standing orders and in Soundararaja Iyengar's "Land Tenures

in Madras Presidency" at page 168. That would indicate that the land revenue was fixed on what the soil would yield and not on the basis of the

actual yield of the land. In the ascertainment of assessment allowances are made for failure of crops and bad seasons at a certain percentage. The

income thus ascertained is commuted into money value having regard to the price of the produce during the previous 20 non-famine years. There

again allowances are made for cultivation, cartage and other expenses.

Thus the land revenue, though based in theory on the nett income from the land, could not properly be held to be a share of the actual income

every year, though it may perhaps represent a share of the produce at the time of the settlement. It follows that in years where the crops are good

and/or the prices are high the landholder would realise considerably more than half the nett income as he would have to pay the Government only a

commuted rate as fixed at the previous ryotwari settlement. It may be that in certain years there is a partial or total failure of crops. As the

assessment is made on the basis of what the land is capable of yielding till the next settlement, it would not depend on the vicissitudes of

agriculturist's fortune.

To adopt such a principle would complicate the process of assessment and the realisation of the revenue. The assessment being fixed for the

duration of the settlement, the land-holder who has the advantage in years of plenty could have no reason to complain if in certain years there is a

partial failure of crops. In cases where there is a total failure of crops, provision is made in the Board's Standing Orders, though now modified by

the impugned G. O. No. 683, for granting a remission of tax.

Therefore, independent of any remission that a landholder may obtain, the tax was fixed at the last ryotwari settlement regardless of the question

whether the income was high or low. I cannot, therefore, accept the contention of the learned advocate for the petitioner that in famine years the

Government has no right to levy any land revenue on the principle that the Government is entitled to only a share in the produce.

(14) It was next contended on behalf of the petitioner that the refusal of the Government to grant remission to the petitioner was illegal. It is

unnecessary to consider this argument in detail in view of the decisions of Govinda Menon J. in W. P. No. 332 of 1953, Venkataramappa v. State

of Madras and Vanamamalai Ramanuja v. State of Madras, W. P. 437 of 1953, which dealt with the precise point. The learned Judge held that

the question of remission of land revenue should not be considered from the point of view of fundamental rights and no question of classification

could arise in such a matter. The learned Judge also held that G. O. No. 580 dated 26-2-1953 which modified the rules for grant of remission of

land revenue contained in Board's Standard Orders 12 and 14 were valid. After considering various authorities on the subject the learned Judge

summed up the position thus:

I am inclined to think that the question of remission cannot be considered from the point of view of fundamental rights and as such no question of

classification can arise. There is no right in a person to get a remission of land revenue. Even if it can be understood as a fundamental right and Art.

14 can be applied, still it seems to me that there has been a reasonable and just classification which is practical from all points of view. Such

reasonable classification exists in S. 4 of the Madras Agriculturists Relief Act which is to the effect that the Act, would not apply to persons who

pay Income Tax or who pay land tax above a certain sum.

It is not a practical proposition to find out the exact land revenue payable by one individual in more taluks than one. Such an enquiry would be

beset with difficulties of a overwhelming nature not commensurate with the result that is likely to be achieved. Therefore, when the Government

stated that persons who pay more than Rs. 101 as land revenue in one taluk could not have the benefit of the G. O., there has been a reasonable

classification which comes within the seventh proposition laid down by Fazl Ali J. in *State of Bombay v. F. N. Balsara*, 1951 2 Mad LJ 141 : AIR

1951 SC 318. Therefore viewed in either light, viz. if the G. O. is a law, then there is proper classification or if it is an executive or administrative

act, then there is no fundamental right involved to ask for a remission, the G. O. cannot be impugned.

(15) I am in respectful agreement with the observations and conclusions of the learned Judge. There is, therefore, no substance in the contention of

the learned advocate for the petitioner that the levy of surcharge is illegal. These petitions therefore fail and are dismissed. No order as to costs.

(16) Petitions dismissed.