
(1956) 04 OHC CK 0006

In the Orissa High Court

Case No : O.J.C. No"s. 144 and 317 of 1954

Gade Rajagopalarao and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-04-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Estates Abolition Act, 1951 — Section 2, 3
Orissa Estates Land (Amendment) Act, 1947 — Section 3(2)

Citation : AIR 1956 Ori 214 : (1956) 22 CLT 444

Hon'ble Judges : Rao, J; Mohapatra, J

Bench : Division Bench

Advocate : D. Narsu Raju, in No. 144 and N.V. Ramdas, for the Appellant; A.G. and J.C. Naik, for the Respondent

Final Decision : Allowed

Judgement

Mohapatra, J.—These are petitions under Article 226 of the Constitution of India in the following circumstances: The present petitioners in O.J.C. 144/54 are in possession and enjoyment, as absolute owners, of about 60 acres of Inam lands in the village of Rajavallipalli, Purushottampur Taluk in the district of Ganjam. The petitioners in O.J.C. 317/54 are in possession of 160 acres of Inam lands of the same village. They claim that the lands in suit along with other lands were the subject-matter of grants during the Mahomedan period in the year 1743 A.D.

The grants consisted of areas from three different adjoining villages of Damodarpalli, Sahapur and Bhatakumurada. As the lands granted were situate at one place they constituted the separate village of Rajavallipalli long after 1743 but before the Permanent Settlement. During the enquiry by the Inam Commissioner in the year 1862 the said grants of the year 1743 were confirmed and Inam Title Deed No". 5794 was issued. The confirmation was indeed subject to the payment of Rs. 102/- as quite rent.

The petitioners aver that even though at the time of the Permanent Settlement

the village was entered in the revenue accounts as Rajavallipalli Mokhasa, the Inam grant was never of any named village nor of a whole village, and, as such, the Inam grant does not constitute an "estate" within the meaning of Section 3(2) (d), Madras Estates Land Act, 1908 (hereinafter called the Madras Act), as amended by Orissa Act 17 of 1947.

The Government of Orissa issued Notification No. 2620-XV-2/54-E.A dated 1-7-1954, under "Section 3, Orissa Estates Abolition Act, 1951 (Orissa Act 1 of 1952), hereinafter called the Act, on the basis that village Rajavallipalli is an "estate", and, as such, since the date of the notification it has vested in the State of Orissa. The petitioners, therefore, have come with this petition for quashing the notification as illegal inasmuch as village Rajavallipalli is not an "estate", and for issue of Writ of Mandamus restraining the State of Orissa from taking possession of the village.

2. The question to be determined is whether the Inam village Rajavallipalli is an "estate" within the meaning of the Act. Section 2(g) of the Act defines an estate as:

" "Estate" means any land held by an Intermediary and included under one entry in any of the general registeres of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes revenue-free lands not entered in any register and all classes of tenures or under-tenures or an inam estate or part of an estate and in relation to merged territories means any collection of Mahals or villages held by the same Intermediary which has been or is liable to be assessed as one unit to land, revenue whether such land revenue be payable or has been released or compounded for or redeemed in whole or in part;"

As the definition makes specific provisions for including Inam estates as an estate within the meaning of the Act, we shall have to concentrate upon the question whether the village in question, in an Inam estate. Indeed Inam estate has not been defined in the Act; but there is a provision u/s 2(q) of the Act running to the effect:

"all words and expressions used in this Act but not defined in it, shall have, with reference to any part of the State of Orissa, the same meaning as defined in the tenancy laws and rules for the time being in force and in the absence of written laws and rules as recognised in the custom for the time being obtaining in that part of the State of Orissa".

In accordance with the provisions of Section 2(q) Of the Act, therefore, we shall have to search for the meaning of the Inam estate in the tenancy laws prevailing in that part of the country. The Madras Act does not define in so many terms "inam estate", but in the definition of "estate" in Section 3 of the Madras Act it is sufficiently made clear by the provisions of Section 3(2) (d) under what circumstances an Inam village can be taken to be an estate within the meaning of the Madras Act. Clause (d) of Section 3(2) of the Madras Act, as amended by

Orissa Act 17 of 1947, stands thus:

"any inam village of which the grant has been made, confirmed or recognised by the British Government notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees.

"Explanation (1) -- Where a grant as an inam is expressed, to be of a named village, the area which forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service or other tenure or been reserved for communal purposes."

For the purpose of this case we are not concerned with Explanations 2 and 3.

3. The position is well settled and it is not disputed before us that an inam village is an estate only if the village was either granted or confirmed or recognised by the British Government and further that the grant must have been of the entire village.

It is equally clear by very high authorities and it does not require any discussion by us; and particularly as the position is not challenged, in order to construe whether the Inam grant constitutes an estate within the meaning of the Madras Act, we are to consider the circumstances existing at the time when the grant was made, that is to say, that the grant was in respect of a whole village at the time when it was made. It would not be taken to be an estate if subsequent to the grant, the area granted formed the village. We may in this connexion simply refer to two highest authorities on the subject in the case of . The District Board, Tanjore represented by its President Vs. M.K. Noor Mohamed Rowther and Others, and in the case of Kriahnaswami v. Perumal, reported in AIR 1950 PC 105

4. Our task in this particular case is, therefore, to see if at the time of the grant it was in respect of an entire village. We have, in this connexion, that best evidence which is entitled to very great weight, that is, the Fair Inam Register prepared on enquiry by the Inam Commissioner in the year 1862. The register itself indicates that it was prepared on a thorough enquiry into the matter and the grants were produced before the Inam Commissioner. It is only after this thorough enquiry that the grants were confirmed. Some portions of the entries should be quoted here:

"The whole village was not given in one occasion. It was given on three occasions. One Katti of land from Damodarapalli, three Kattis from Sahapur and one Katti from Bhatakumurada. Two Sanads are produced. The whole land is in one place. A village was erected before the permanent settlement and it is entered as a distinct village in the account of permanent settlement. The person in Clause 13 acquired () and one Katti was acquired by his brother which also lapsed to the present family. A Katti varies from 21 to 32 acres.

The value of the village-

As per account of Fasli 1226 As per account of Fasli 1259 As now stated by the Inamdar on the average of the last ten years.

Rs. 105/- Rs. 236/- Rs. 110/-

Extent of cultivation Dry - 30

Extent of cultivation Wet - 150

Sources of irrigation Tanks, Nalas.

Rates of assessment in the neighbouring Government village Dry Wet.

Rs. As. Ps. Rs. As. Ps.

0 10 0 1 0 0

0 3 0 2 0 0

1 10 0 2 8 9

(1) Damodarapalli

(2) Bhatakumurada

(3) Sahapur

Under the above circumstances, I propose to adopt the assessment at Rs. 500/- which is "nearly 11/2 rupee an acre for dry and 3 an acre for wet and rupee one/ fourth an acre for wise,

Some of the Inams entered in col. 16 that is those marked "X" are also entered in the account of Fasli 1226, but they are all subsequent to the Mokhasa grant. There was no village before the grant Inams were given on three occasions and a village has been subsequently erected in it. Consequently it must be treated as subsequent. If this village had been in existence before it was granted as a Mokhasa, the entry in the accounts of Fasli 1226 may be taken as proved that the Inam is perhaps older than the Mokhasa."

The entries in the Fair Inam Register prepared in the year 1862 are of great value as pronounced by the highest authorities. We will, in the first instance, refer to a decision of their Lordships of the Privy Council in the case of Arunachalam v. Venkatachalapathi, reported in AIR 1919 PC 62 We will quote the passage appearing at p. 65 of the report:

"It is true that the making of this register was for the ultimate purpose of determining whether or not the lands were tax-free. But it must not be forgotten that the preparation of this register was a great act of state, and its preparation and contents were the subject of much consideration under elaborately detailed reports and minutes.

It is to be remembered that the Inam Commissioners through their officials made enquiry on the spot heard evidence and examined documents, and with regard to

each individual property, the Government was put in possession not only of the conclusion come to as to whether the land was tax free, but of a statement of the history and tenure of the property itself. While their Lordships do not doubt that such a report would not displace actual and authentic evidence in individual cases, yet the Board when such is not available, cannot fail to attach the utmost importance, as part of the history of the property, to the information set forth in the Inam Register."

This passage was quoted with approval by the same Board in the case of *Shankara Narayana v. Board of Commissioner*, AIR 1948 PC 25. The quotation appears at p. 241 (of Ind App) : (at p. 30 of AIR) of the report. Their Lordships further observed that:

"It is true that when the terms of the grant are available, the inam title deeds are not evidence as to the effect of the grant, which must depend on the language used in the instrument and the circumstances of the grant itself."

But in the present case, the grants being untraceable, we will attach great importance to the oldest document on record describing the circumstances under which the grants were made and that different grants were "made from different villages which subsequently constituted a village before the Permanent Settlement, and as such in, the Permanent Settlement papers it appears as a separate Inam village as Rajavallipalli. A similar pronouncement was made by the Judicial Committee in the case of AIR 1942 21 (Privy Council) .

5. The Advocate-General, appearing on behalf of the State, however, places strong reliance on the provisions of Sections 23 and 167 of the Madras Act. Section 23 runs as follows:

"Where in any suit or proceeding it becomes necessary to determine whether an inam village or a separated part of an inam village was or was not an estate within the meaning of this Act as it stood before the commencement of the Madras Estates Land (Orissa Second Amendment) Act, 1946, it shall be presumed, until the contrary is shown that such village or part was an estate."

Section 167 of the Madras Act lays down that entry in the finally published record of rights raises a presumption of correctness. There is no dispute over the proposition in the present case. But the position is clear that the presumptions are rebuttable presumptions and in our view the presumptions arising under the aforesaid provisions have been sufficiently rebutted by reference to the oldest and most important document on record.

It is equally clear to us that the settlement record of rights which was finally published in recent years was prepared on the basis of the Permanent Settlement where in reference had been made to Inam grant of village Rajavallipalli. This is absolutely consistent with the Inam Register that this village was TJaostittSeo! only after the three grants made as the grants were in respect of the lands continuous to each other.

The law being absolutely settled," for the purpose of construing whether it is an estate or not, / we have had to refer back to the time of the original grant to see whether it was in respect of a whole village or not. In our view, therefore, village Rajavallipallit is not at an "estate" within the meaning of Section 3(2)(d) of the Madras Act and, as a matter of fact, therefore under the definition of the Abolition Act.

6. The Advocate-General has placed strong reliance upon the definition of an "estate" in the Orissa Act 17 of 1954 (The Orissa Estates Abolition (Amendment) Act, 1954) amending many of the provisions of the original Abolition Act. The amended definition stands thus:

" "estate" includes a part of an estate & means any land held by or vested in an Intermediary and included under one entry in any revenue roll or any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law relating to land revenue for the time being in force or under any rule, order, custom or usage having the force of law, and Includes revenue-free lands not entered in any register or revenue-roll and all classes of tenures or under-tenures and ,any jagir, inam or muafi or other similar grant.""

The Orissa Act 17 of 1954 came into force on 4-12-1954, that is, long after the notification which is being impeached before us. Indeed if this Act governs the present case, any Inam grant will constitute an. estate within the meaning of the Act and we need not fall back upon the provisions of Section 3(2)(ri) of the Madras Act. Manifestly, this provision will apply to the present case only if the provision is retrospective and not otherwise as the notification u/s 3 of the Act is dated 1-7-1954.

The learned .Advocate-General strongly contends that this Act of 1954 is merely declaratory and has been legislated only for the purpose of clarifying some doubts about the word "Inam estate", and as such, it must be taken to be retrospective under the recognised rules of construing declarator Acts. He, in support of his proposition, relies upon Crawford's Statutory Construction -- Interpretation of Laws, 1940 edition, page 107, para 74 :

"Declaratory Statutes--Generally speaking, declaratory statutes can be divided into two clauses: (1) those declaratory of the common law and (2) those declaring the meaning of an existing statute. Obviously, those declaratory of the common law should be construed according to the common law. Those of the second class are to be construed as Intended to lay down a rule for future cases, and to act retrospectively. They closely resemble Interpretation clauses, and their paramount purpose is to remove doubt as to the meaning of existing law, or to correct a construction considered erroneous by the legislature."

On a perusal of the Orissa Act 17 of 1954, we cannot accept it to be an Act simply to declare the meaning of an existing statute and does not also legislate for the purpose of clarifying any doubts. The learned Advocate-General relies upon the feature that by the time the Bill was introduced, quite a number of

petitions under Art, 226 of the Constitution had been filed in the High Court on the contention that different items of notification did not constitute an estate within the meaning of the Act.

As such there were some doubts which were to be clarified and were in fact clarified by bringing a piece of legislation. The word used in this Act is "Inam estate". In our view what is exactly the meaning of the word "Inam estate" under the Madras Act did not admit of doubt in the year 1954. It was well settled as to what are the conditions necessary for constituting an Inam village to be an estate within the meaning of Section 3(2)(d) of the Madras Act.

This Orissa Act 17 of 1954 was clearly legislated with the set purpose of extending the meaning of the word "estate" So far as Inam villages are concerned, that is to say, that even though Inam villages may not constitute an estate within the meaning of the Tenancy Act, any inam grant is included within the term "estate" as defined in the new Orissa Act of 1954. It is purely a widening provision and not a clarifying one. This is an ex-proprietary Act and in order that it may have retrospective effect, the language of the Act must clearly indicate that it is made so retrospect. Our view that it is a widening definition and not merely a clarifying one is strengthened by reference to the provisions of Section 3 of the Orissa Act of 1954:

"For the purpose of removal of all doubts it is declared that such lands and such rights in relation thereto and such persons who hold such lands and such rights as were heretofore covered by the definitions of the words "estate" and "Intermediary, in the Orissa Estates Abolition Act, 1951, shall not cease to be so covered merely on the ground that by virtue of the provisions of this Act- the said definitions have been amended and widened in scope."

The last words make it clear that by virtue of the provisions of this Act such definitions have been amended and widened in their scope. In the absence of a clear language making the Act retrospective, we are bound to hold that the Orissa Act 17 of 1954 is merely prospective.

7. Another point also has been taken by the Advocate-General that this case should not be decided while the Court exercises jurisdiction under Article 226 of the Constitution as the decision of the question depends upon the conflicting evidence which can be determined only by a competent Court of law exercising original jurisdiction. He, has relied upon a decision of the Madras High Court in the case of Chandra Chudamani v. Madras State AIR 1952 Mad 589 (P). It is pronounced there:

"In exceptional cases when on the face of the record or on admitted facts. It is clear that a particular property does not fall within the definition of an estate in Section 3(2), Madras Estates Land Act, 1908, the High Court can quash the order of the Government u/s 3(2), But in the majority of cases it may not be possible for this Court with its limited scope of Jurisdiction under Article 228 of the Constitution to give relief to an applicant who alleges that his property does not

fall within the definition. In such cases, the proper and adequate, remedy would be by way of a suit. There can be no question that a suit to challenge the validity of an order of the Government made u/s 3 of the Act on the ground that the Act itself does not apply to the property concerned would be maintainable."

In our view, the present case is definitely one off the exceptional cases envisaged by Rajamannar C.J in his judgment in the case. In view of the strangest evidence of the year 1862, that is, the Fair Inam Register, we have absolutely no doubt in our mind as to the circumstances existing at the time of the grant which would now deter, mine the point of controversy of the present case.

If really on the materials placed before us the position is not clear to us and we entertain some doubts about the position of fact, it will be improper to exercise jurisdiction under Article 226, because controversial questions of facts have got to be determined by taking evidence and affording sufficient opportunities to the parties to produce them.

We had repeatedly asked the learned Advocate-General as to what other evidence could possibly be available to determine the State of affairs at the time, of the grant to counteract the effect of the Pair Inam Register; but he was not able to enlighten us on the point, manifestly for the reason that there could be none.

8. Still another point has been taken on behalf of the State that the O.J.Cs. should not be decided in the absence of the raiyats of the village who are vitally interested in the decision whether the village is an estate or not. The Government, issued notification u/s 3 of the Act vesting the village of the present petitioners in the State.

Undoubtedly the petitioners are vitally affected by the notification and have every right to file the present petitions on the allegation that the notification is illegal as the village Rajavallipalli is not an estate within the meaning of the Act, and, as such, does not vest in the Government. The Government are opposing the contentions of the petitioners stating that the village is an estate and has vested in the Government.

If we are satisfied that the notification is Illegal and an appropriate writ will be issued, the absence of the raiyats, who are indirectly affected by the decision, does not make the petitions defective in any manner whatsoever and it cannot be accepted that in all such cases the petitioners will be required to bring in all the raiyats of the village as parties to these proceedings.

Whether this decision is binding on the raiyats or not, we are in these petitions called upon to decide and must decide whether the notification in respect of the village is illegal or otherwise. We may in this connexion quote a passage from the decision of Rajagopalan J., in the case of Sundaram Pillai v. State of Madras, reported in (1955) 1 MLJ 235

"I am not deciding in this case what are the other rights inter se the inamdars and the ryots, that is, whether the ryots have acquired by means other than those provided for by the Estates Land Act, or under the Act after the amendment of 1936, permanent rights of occupancy in any of the lands in the village. That is wholly outside the scope Of my investigation in these proceedings.

As pointed out by Venkatarama Aiyar J., in M.K. Govinda Reddi Vs. E.K. Pattabhi Rama Reddi and Others, , that in a given case the ryots could claim permanent rights of occupancy in some of the lands as against the inamdars in no way affects the determination of the question, do the terms of the original grant establish that a given village is an inam estate as defined by Section 2(7) of Madras Act (26 of 1948)".

The objection on this count therefore is overruled.

9. in conclusion, the petitions are allowed with costs, The notification dated 1-7-1954 in respect of village Rajavallipalli u/s 3, Orissa Estates Abolition Act, 1951 (Orissa Act 1 of 1952) is illegal and the village has not vested in the Government. A Writ of Mandamus is ordered to be issued against the State not to take delivery of possession of the village on the basis of the said Notification dated 1-7-1954. Hearing-fee and the costs are assessed at Rs. 100/- (rupee one-hundred) in each case.

Rao, J.

10. I agree.