

(1979) 01 MAD CK 0010
In the Madras High Court

K. Somasundaram Pillai and Others

APPELLANT

Vs

R. Dorairaj and Others

RESPONDENT

Date of Decision : 05-01-1979

Acts Referred:

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 18

Citation : (1979) ILR (Mad) 386 : (1979) 92 LW 366 : (1979) 1 MLJ 443

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—All these eight appeals which have been filed on the basis of leave granted under Clause 15 of the Letters Patent, arise

out of a common judgment rendered by Venkataraman, J., in 8 appeals of which 5 are Second Appeals and 3 are Civil Miscellaneous Second

Appeals.

2. The Second Appeals arose out of O.S. Nos. 88 to 92 of 1968 filed for possession of certain properties, arrears of rent and future mesne profits

on the file of the District Munsif, Pudukottai. The Civil Miscellaneous Second Appeals arise out of three execution petitions filed for execution of

the decrees obtained in another set of three suits, O.S. Nos. 103, 104 and 106 of 1955 on the file of the same District Munsif's Court. Since the

facts are more or less identical in all these matters, it is not necessary to deal with the facts in each case. All these suits related to certain vacant

sites in the village of Avidainalla Vijayapuram. It is a whole inam village taken over by the Government with effect from 15th April, 1965 under the

provisions of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act XXVI of 1963, hereinafter referred to as the Act, The

sites involved in these cases are comprised in Survey No. 157/1 and 158/1 of the same village. As per the village records, Survey No. 157/1 is an

old waste and S. No. 158/1 is a gramamatham. The entire village belonged to the landholder of the village, one Dorairaj, the respondent herein and

before the said Act came into force, he had leased out the said sites to several persons, hereinafter referred to as tenants, and they had executed

lease deeds agreeing to pay rent and also to deliver possession of the sites after removing the superstructures, if any, put up by them whenever

called upon. After the expiry of the periods fixed in the various lease deeds executed by the tenants, the respondent issued quit notices to them and

then filed several suits in the Court of the District Munsif, Pudukottai for recovery of possession along with mesne profits.

3. Three of such suits were O.S. Nos. 103, 104 and 106 of 1965. In O.S. Nos. 104 and 106 of 1965 decrees were passed by consent on 15th

March, 1965 and 9th March, 1965 respectively on the tenants agreeing to deliver the properties within three months. In O.S. No. 103 of 1965, a

decree for possession was passed by consent on 27th April, 1965. The respondent filed execution petitions, E.P. Nos. 117, 120, 121 of 1968 in

O.S. Nos. 104, 106 and 103 of 1965 respectively. The tenants resisted these execution petitions inter alia on the ground that the decrees could

not be executed because the village has been taken over by the Government on 15th April, 1965 under the provisions of the Act, as such the

landholder's right in the entire estate including the suit sites had been extinguished except to the extent to which they were recognised under the

Act, that u/s 15(4) and (5) of the Act, the superstructures put up by them as well as the sites on which the superstructures had been erected stood

vested in the respective tenants, and that they were liable to pay the assessment as also the rent which they had been previously paying to the

landholder only to the Government. In support of their contention they relied on the decision of Natesan, J., in Silambani Sri Chidambara

Vinayagar Devasthanam Vs. Duraisamy Nadar and Another, . The executing Court, however, held that the notification of the Government under

the Act had not brought about any change regarding the executability of the consent decrees passed in O.S. Nos. 104 and 106 of 1965 earlier to

the date of the notification and that the decision of Natesan, J., will not apply to the facts of those cases. It therefore ordered delivery in E.P. Nos.

117 and 120 of 1968. So far as E.P. No. 121 of 1968 was concerned, the Court held that as the decree itself had been passed after 15th April,

1965, the notified date, it will operate as *res judicata* as against the tenant's claim for benefit under the Act as he had not claimed such benefit

before the consent decree was passed in the suit and in that view that execution petition was also ordered.

4. The tenants filed Civil Miscellaneous Appeal Nos. 72, 73 and 74 of 1968 on the file of the District Judge, West Thanjavur, against the orders

passed by the executing Court in E.P. Nos. 121, 117 and 120 respectively. The learned District Judge upheld the order of delivery passed by the

executing Court in E.P. No. 121 of 1968 but set aside the order for delivery in E.P. Nos. 117 and 120 of 1968 on the ground that the decrees

sought to be executed had become inexecutable as the superstructures and the site had subsequently vested in the tenants on 15th April, 1965, the

date of notification. The tenant filed C.M.S.A. No. 122 of 1969 against the order of delivery passed in E.P. No. 121 of 1968 and the landholder

filed C.M.S.A. Nos. 7 and 8 of 1970 against the dismissal of E.P. Nos. 117 and 120 of 1968.

5. In the meanwhile the landholder filed five suits, O.S. Nos. 88 to 92 of 1968 against another set of tenants for recovery of possession, arrears of

rent and future mesne profits in respect of certain other sites on which the tenants have put up superstructures. The said suits were resisted by the

tenants on the ground that the rights of the landholder in the sites leased out to them having been extinguished by virtue of the notification issued

under the Act as and from the notified date, the suits, are not maintainable. The trial Court, however, decreed the suits. On appeal by the tenants,

the District Court reversed that decision and dismissed the suits. The landholder therefore filed Second Appeal Nos. 168 to 172 of 1970 before

this Court.

6. The Second Appeals filed by the landholders and the Civil Miscellaneous Second Appeal referred to above were heard together and a common

judgment was rendered by Venkataraman, J. The learned Judge, purporting to follow the decision of a Division Bench of this Court in *Silambani*

Sri Chidambara Vinayagar Swami Devasthanam Devakkottai and Others Vs. Duraisami Nadar and Others, held that since the superstructure did

not belong to the landholder and as the sites cannot vest in the tenants along with their buildings, the ownership of the site should not be taken to have been extinguished under the provisions of the Act and therefore the landholder is entitled to maintain the suits and the execution petitions. In that view the learned Judge allowed C.M.S.A. Nos. 7 and 8 of 1970 and dismissed C.M.S.A. No. 122 of 1969. The second appeals were also allowed, the decrees passed by the trial Court restored. Against the decision of Venkataraman, J., the above Letters Patent Appeals have been filed.

7. According to the learned Counsel for the appellants the decision of Venkataraman, J., is not in accordance with law and it cannot therefore be sustained. The learned Counsel for the respondent however submits that the decision under appeal is in consonance with the view taken by the Division Bench in *Silambani Sri Chidambara Vinayagar Swami Devasthanam Devakkottai and Others Vs. Duraisami Nadar and Others*, and that, therefore, it does not suffer from any infirmity.

8. There is no dispute as to the facts set out above. The respondent was admittedly the landholder and the appellants were his tenants in respect of the suit sites over which they have put up superstructures. That the village in which the sites are situate has been taken over by the Government under the Act is also not in dispute. The only controversy between the parties is as to whether the landholder's right in the sites leased out to the tenants had been extinguished by the taking over of the village under the provisions of the Act. If there is such an extinguishment, the landholder cannot seek any relief by way of delivery of possession or recovery of future mesne profits subsequent to the notified date. If there is no such extinguishment, the respondent will be entitled to maintain the suits for the above reliefs. This controversy has to be resolved with reference to the relevant provisions of the Act.

9. As per its preamble, Act XXVI of 1963 has been enacted for the acquisition of the rights of landholders in inam estates in the State of Tamil Nadu and the introduction of the ryotwari settlement in such estates. Section 3(b) of the Act says that the entire inam estate (including all communal lands and porambores, other non-ryoti lands, wastelands, pasture lands, forests etc., shall stand transferred to the Government and vest in them,

free of all encumbrances. Clause (c) says that all rights and interests created in or over the inam estate before the notified date by the principal or any other landholder, shall as against the Government cease and determine. Clause (e) provides that the landholder whose rights stand transferred under Clause (b) or cease and determine under Clause (c) shall be entitled only to such rights and privileges as are recognised or conferred on him by or under the Act. Clause (g) states that the rights and privileges which have been acquired in the inam estate by any person before the notified date, against the landholder, shall cease and determine, and shall not be enforceable against the Government or such landholder, and every such person shall be entitled only to such rights and privileges as are recognised or conferred on him by or under the Act. Section 15 deals with vesting of buildings situated in an inam estate, taken over under the Act. Sub-section (1) of Section 15 provides that every building situated within the limits of an inam estate, which immediately before the notified date, belonged to any landholder or was being used by him as an office in connection with its administration and for no other purpose, shall vest in the Government free of all encumbrances with effect from the notified date, Sub-section (2) says that every building so situated which, immediately before the notified date, belonged to any such landholder and was being wholly or principally used for the occupation of any religious, educational or charitable institution, shall also vest in the Government as and from the notified date. Sub-section (4) says that every building other than a building referred to in Sub-sections (1), (2) and (3), shall with effect from the notified date vest in the person who owned it immediately before that date, but the Government shall be entitled in every case to levy appropriate assessment thereon and in case of a building which vests in a person other than a landholder also to the payments which such person was liable immediately before the notified date to make to any landholder in respect thereof, Sub-section (5) defines "building" as including the site on which it stands and any adjacent premises occupied as an appurtenance thereto. Sub-section (6) says that if any question arises whether any building or land falls or does not fall within the scope of Sub-sections (1) to Sub-section (5), it shall be referred to the Government whose decision shall be final.

10. A conjoint reading of Sections 3 and 15 of the Act indicates that though all lands in an inam estate including porambores vest in the

Government u/s 3(b) on the date of the notification of taking over of the estate and the interests of the landholder therein are completely

extinguished, there is no such vesting in the Government and extinguishment of rights of the landholder under that section in the sites over which

buildings have been erected either by the landholder or by any other person. Such sites have been separately dealt within Section 15. u/s 15

buildings belonging to the landholder which have been put to particular uses are dealt with in Sub-sections (1) to (3). Sub-section (4) deals with

buildings other than those referred to in Sub-sections (1) to (3). As per Sub-section (4) the building vests in the person who owned it immediately

before the notified date. The definition of the building in Sub-section (5) includes the site on which the building stands and the adjacent premises

occupied as appurtenant thereto. If the definition of "building" in Sub-section (5) is incorporated in Sub-section (4) it will mean that the building

and the site on which it stands as also the site appurtenant thereto will vest in the owner of the building as and from the notified date, whether he be

the landholder or any other person. However, having regard to the object of Section 15(5) which is to effectuate Sub-section (4), it can apply only

to cases where the site would otherwise vest in the Government u/s 3(b) of the Act as part of the inam estate.

11. Construing a similar provision (Section 18 of Tamil Nadu Act XXVI of 1948) Veeraswami, J. (as he then was), in V.V. Venkatasubramania

Pillai v. The Board of Revenue by the Commissioner of Settlements, Madras and Ors. W.P. No. of 1961 took the view that though the effect of

Section 18(5) would undoubtedly be that the owner of the building falling within the ambit of Section 18(4) would also be entitled to the site on

which the building stands, in cases where the site would otherwise have vested in the Government in pursuance of a notification u/s 3 it is not

intended to divest the title of a private owner to the site and vest it in the owner of the building on the site, and that Section 18(4) does not appear

to contemplate a case where the building belongs to one person and the site on which it stands to another who is not a landholder. According to

the learned Judge Section 18 will apply only to cases where the building which belongs to an individual, is on a site which but for that section would

have vested in the State Government upon a notification u/s 3 and not to cases where the sites are not owned by the landholders. The same

provision came up for consideration in *Silambani Sri Chidambara Vinayagar Devasthanam Vs. Duraisamy Nadar and Another*, . In that case the

landholder sued the tenant for rent in respect of the site let out prior to 1948 for building purposes. The site was situated in a village which had

been taken over under the Tamil Nadu Act XXVI of 1948. On the date of taking over, the building continued to be in the occupation of the tenant.

The tenant's defence to the suit was that under the provisions of the said Act the site along with the building had vested in him and that the title of

the landholder to the site got extinguished. The Courts below held that the landholder had lost his right to the site as and from the date of the

notification and therefore he was not entitled to claim any rent for the site from the tenant. Natesan, J., expressed the view that where a landholder

has leased out a site for building purposes he cannot claim the superstructure built by the tenant as vesting him as part of the site or claim the site as

part of the building, and Sub-section (5) of Section 18 (corresponding to Sub-section (5) of Section 15 of the Act) does not confer any-new or

special right on the landholder when he is not the owner of the superstructure, that it is only for the purpose of vesting that is provided for u/s 18(4)

the building is made to include the site on which it stands, and that so far as the landholder is concerned co instanti with the notification of the estate

he loses all interest in the estate, and therefore, his interest in the estate on which the building stands, of which he is not the owner is extinguished.

The relevant observations of Natesan, J., are extracted below:

The object of the Abolition Act is to introduce Ryotwari Settlement in estates. The landholder in his right as the proprietor of the estate might have

granted on lease sites to tenants and others for building purposes for rent. Under the Ryotwari Settlement introduced by the Abolition Act, the

Government takes the place of the proprietor and vests the site in ownership with the owners of the buildings subject to their paying proper

assessment on the sites. The landholder is compensated under the Act for the deprivation of his interests in the estate. Viewed in this perspective,

little room is left for subtle arguments that the proprietor having provided sites for the building must be deemed to be a co-owner with the owner of

the superstructure of the building and the premises as such would be held in joint ownership, the proprietor as the owner of the site and the tenant,

the superstructure. In my understanding of the section, the two questions that arise under it, one who owns the building and two, what goes with

the building, must be kept distinct.

12. The said view of Natesan, J. was challenged before a Division Bench consisting of Veeraswami, CJ.5 and Raghavan, J. The Bench took the

view that the definition of a building contained in Section 18(5) when incorporated in Sub-section (4) would have the consequence that the building

as well as the site on which it stood both vest in the person, owning the building, but however? if the landholder even after the notified date

continued in possession of the land, such possessory title would entitle him to demand and collect the rent from the tenant. In that view the matter

was remitted to the trial Court for finding out whether the landholder continued to be in possession of the site on which the building stood after the

notified date and if it is found to be so, to decree the suit. It is this decision which has been followed by Venkataraman, J., for allowing the appeals

before him in the judgments under appeal. According to Venkataraman, J., as the view of Natesan, J., has been reversed by the Division Bench,

the sites over which the tenants have put up buildings should continue to vest in the landholder. However, a close perusal of the judgment of the

Division Bench indicates that the Bench in fact accepted the view of Natesan, J. The following passage in the judgment of the Bench makes this

clear:

The result of Sub-section (5) to our mind is that the definition contained therein when incorporated in Sub-section (4) would have this

consequence, that, if the building as well as the site on which it stands both belong to the same person upon the notification, both of them will vest

in that person. That, we think is the true scope of Sub-sections (4) and (5) read together. These provisions do not contemplate a transfer of the

ownership of the site to the owner of the building where it had not already belonged to him. Unless there is a coalescence of the ownership of the

building as well as of the site on which it stands, there will be no vesting under Sub-section (4). That is the view Natesan, J., took and we agree

with him.

13. It is true the passage contains an observation about the necessity for coalescence of the ownership of the building and of the site in the same person for the application of Section 15(4). But that observation is to be understood with reference to a case where the site is not owned by a landholder and as such there is no question of its vesting u/s 3(b). Obviously in such a case there is no transfer of ownership of the site to the owner of the building. The fact that the Bench has agreed with the view of Natesan, J. indicates it has agreed with the opinion expressed by him that where the site in an inam estate has been built upon by the tenants, before the date of the notification, the site will not vest in the Government but will vest in the tenants. The matter, however, came to be remitted in that case by the Division Bench only on the basis that even a trespasser who is in possession is entitled to it except as against the lawful owner and that the possessory title if any, held by the landholder subsequent to the date of notification will enable him to maintain a suit for rent.

14. The view we have taken above on an interpretation of Sub-section (4) read with Sub-section (5) of Section 15 is consistent with the view

taken by the Division Bench in *Silambani Sri Chidambara Vinayagar Swami Devasthanam Devakkottai and Others Vs. Duraisami Nadar and*

Others, , on the interpretation of Section 18 of the Act XXVI of 1948. In the judgment under appeal, Venkataraman, J., held that the landholder is

entitled to maintain the suits on the basis of the view taken by the Division Bench. We do not see how the said decision would help the landholder

(respondent) in these cases. It has not been alleged by the landholder that he was in possession of either of the site or the building at any time

subsequent to the notified date. He has also not disputed that the tenants have been in possession of both the superstructure and the site before and

after the date of the notification. Therefore, there is no question of any enquiry as to whether the landholder was in possession of either the site or

the superstructure after the date of the notification.

15. Mr. Parasaran, learned Counsel for the respondent would submit that the purpose of Section 15(5) is only to avoid the vesting u/s 3(b) in the

Government of a site over which superstructure has been created and not to vest the ownership of the site with the tenant who owns the

superstructure, that as such the ownership of the site should continue to vest in

the landholder, that in such an event the landholder as well as the tenants in these cases will become co-owners of the property comprising of the site and the building and that therefore the rights inter se between the landholder and the tenant, in these cases have to be decided by the Civil Court on the basis of the general law relating to co-owners. We are of the view that such a construction of Sub-section (5) will defeat the very object of the Act which is to acquire the rights of landholders in inam estates. If the landholder is taken to continue to own the site over which buildings have been built by the tenants notwithstanding the notification, it will be against the teeth of the general vesting contemplated in Section 3(b). He can avoid that vesting if the site only if he had put up the building and not when someone else had put up a building thereon. He cannot take advantage of the existence of buildings put up by the tenants to claim that the site continues to vest in him. Section 3(b) contemplates the vesting of all lands including grama natham. But an exception has been made in Section 18 in respect of poramboke lands on which buildings had been erected, by treating such lands as part of the buildings and vesting them in the person owning the buildings.

16. It is not claimed in these cases that the site over which the superstructure has been erected by the tenants is part of the landholder's private property. Admittedly the land over which superstructures have been erected is gramanatham which is a poramboke. Therefore there is no question of the landholder having ownership of the land after the notified date so as to enable him to claim co-ownership with the tenants in respect of the buildings, which, as a result of Sub-section (5) includes the site also. We are therefore of the view that the landholder has no right either the claim recovery of possession or mesne profits subsequent to 15th April, 1965, the date of notification. Hence we allow the Letters Patent Appeals and set aside the judgment of Venkataraman, J. There will, however, be no order as to costs.