
(1891) 02 MAD CK 0001
In the Madras High Court

Karunakara Menon

APPELLANT

Vs

Secretary of State for India

RESPONDENT

Date of Decision : 24-02-1891

Acts Referred:

Citation : (1891) ILR (Mad) 431

Hon'ble Judges : Wilkinson, J;Muttusami Ayyar, J

Bench : Division Bench

Judgement

1. This was a suit brought by the appellant to establish his title as against the Crown to the shrotriem village of Coromandel in the District of Chingleput. The village was included in what was originally called the late East India Company's jaghire which was ceded by His Highness the Nabob Wallajah to the British Government in 1763. In 1760 the Nabob granted the village free of assessment and with all sources of revenue to one Fakruddin Mohamed Abubakar, Kazi of Madras, as an endowment for his office. In 1761 the Nabob re-granted it to the said Kazi's son, Mohidin Abubakar, for his personal benefit and that of his descendants without the condition of service. In 1779 the British Government, referring to the first grant, confirmed the village in perpetuity to Mohidin Mohamed Abubakar and such of his direct heirs of suitable qualification and fitness on account of the office which he filled. Mohidin Mohamed Abubakar since held the office of Kazi and died in 1808, and his son Mohamed Abubakar then succeeded to the office and to the inam village. Mohamed Abubakar died in 1862 and left no direct male heirs, There were then several claimants for the office and the Government approved of the nomination of one Abdul Kadir, a daughter's son of the original grantee, and

directed that he should hold the village, adding that it was originally assigned as an endowment for the support of the Kaziship (Exhibit I). In

November 1862 the inam inquiry was extended to the village and the Inam Commissioner considered that the grant was apparently for the

personal benefit of the holder, and confirming it accordingly as a personal inam in ignorance of the previous orders of Government on the subject,

enfranchised it and issued a title-deed (Exhibits F and G). In 1865 the matter came to the notice of Government and after calling for a report, the

Government held that the right of the Kazi to the village depended on the British parvana or grant of 1779, and on 20th February 1866 directed

that the title-deed, issued by the Inam Commissioner, be cancelled, and that the village be registered as an endowment of the Madras Kaziship

(Exhibit IV). In September 1867 the new Kazi transferred the village to the appellant under an instrument of perpetual lease and a deed of sale and

placed him in possession. The title-deed, which the Government directed to be cancelled not being produced, it was notified in the Fort St. George

Gazette of the 27th May 1868 that it had been cancelled. In 1872 the appellant claimed the wrecks within the limits of the village of Coromandel

under the parvana or grant of 1760, and rejected certain terms offered by the Government in settlement of his claim on the ground that there was

no law to compel him to accept them. On the 3rd April 1873 the Government referred to the perpetual lease granted by the late Kazi, as

unauthorized and as nullifying to a considerable degree the intention of Government in continuing the gift of the late Nabob, and observing that there

will always be a liability of the same thing happening so long as the endowment consists of an interest in land, resolved to resume the grant and to

pay the Kazi, for the time being, a monthly allowance equivalent to the net income derivable by the inamdar of the village per annum. The village

was accordingly resumed in April 1873, and in October 1876 the Government directed that the whole of its net revenue be paid to the then Kazi.

2. The appellant's case was that the tenure on which the village was held was personal, that the Inam Commissioner was right in enfranchising it as

a personal inam, and that even if he was in error, it was not competent for the Government to cancel the title-deed once issued by him and to

resume the village. He denied that the British Government issued any parvana in 1779 superseding that of 1761, and pleaded that even if it did, it

was not competent for it to do so. On the other hand, it was contended for the Crown that the British parvana of 1779 was genuine, that it superseded that of 1761, that the village was thus confirmed only as an endowment for the Kaziship of Madras on service tenure, that it was upon that grant the Kazi's right to the village depended, that its alienation to the appellant was improper and tended to defeat the purpose with which the grant was made, and that the village was therefore lawfully resumed on the 3rd April 1873, the net income derived from it being thenceforward paid to the Kazi of Madras for services rendered. The Counsel for the Crown suggested also in the Court below that the resumption of the village was an act of State and applied for a separate issue in regard to it; but the Judge considered that the question was embraced in the second issue, viz., whether the resumption of the inam by the Government is invalid and ultra vires. The Judge upheld the contention for the Crown and dismissed the suit with costs. Hence this appeal.

3. It will be observed that three parvanas are referred to in connection with the original grant of the village, but none of them is now forthcoming; and as they were issued more than 100 years ago it might be presumed, as alleged, that they had been lost. The finding of the Judge is that all the three parvanas were genuine, that they were issued in 1760, 1761 and in 1779; that by the first the Nabob Wallajah granted the village on service tenure; that by the second he granted it as personal inam, and that by the third the British Government confirmed the village subject to the terms of the first grant, viz., on the condition of the grantee and his heirs performing the duties of Kazi in the town of Madras. So far as the first two grants are concerned, the finding is not questioned in appeal and it is also sufficiently supported by Exhibits C,D,E and IV, of which the substance is accurately stated by the Judge in his judgment. The contest in appeal is restricted to the British parvana of 1779. But that a British parvana did once exist and that it was relied on and accepted as the basis of title to the village there can be no doubt. The recital in Exhibit B, which evidences the perpetual lease granted to the appellant by the Kazi of 1867 is that "the village was granted as inam to my ancestors by Nabob Wallajah in the year 1760 to be enjoyed by them hereditarily by sons and grandsons and confirmed by the Madras Government in the year 1779." Again, in 1838,

the then Kazi claimed compensation for certain sources of revenue in the inam village of which the collection had been resumed by the

Government, and actually produced the British parvana, among other documents, in support of his claim. The correspondence which took place on

that occasion between the Collector, the Board of Revenue and Government shows, beyond doubt, that the then Kazi produced the British

parvana of 1779, relied upon it as authentic and alleged that he once pledged it with one Sabapathy Mudali and since redeemed it, that at the

instance of the Government the Collector then forwarded it for inspection, that from 1838 to 1840 it remained with the Government, and that in

January 1841 it was returned to the Collector for delivery to the then Kazi (Exhibits XI, XIII, XIV to XVII).

4. Another point which is urged upon us is that it was not competent for the Madras Government in 1779 to alter the nature of the grant made by

the Nabob Wallajah in 1761, two years prior to the cession of the Jaghire and that the position of the East India Company was at that time that of

a mere Jaghirdar. An ordinary Jaghirdar has no sovereign power and it is not correct to liken his status to that of the East India Company in 1779.

The relation between the Company and the Nabob Wallajah was of a political character regulated by sannads issued by him, and any act done by

them by virtue of that relation was clearly an act of State and governed by the principle laid down by the Privy Council in the case of the East India

Company v. Syed Ally 7 M.I.A., 555.

5. As regards the contention that the resumption of the village in 1873 was an act of State, we consider it sufficient to state for the purposes of this

appeal that the alienation by the appellant's vendor of the endowment of his office cannot be upheld at all events beyond his life-time. As he died in

1868 we see no reason to question the resumption in 1873.

6. The only point which remains for us to consider is the claim set up by the appellant to certain Mirasi rights and Menkaval lands in the village. No

issue has been framed and no information is to be had from the original judgment on the subject. Exhibit A purports to convey to the appellant for

value ""the single crop village Miras"" with all its income whilst Exhibit B evidences a perpetual lease of the Melvaram right and the income

appertaining to it. And Exhibit B, which is a copy of the order whereby

Government resumed the village, directed that it be struck out of the Inam Register and classed under Jirayati, adding however that under that order there was to be no disturbance of the occupancy rights of any landholder, that the full assessment payable was to be levied and credited to Government and that that was all. Whilst thus the apparent intention was to levy the full assessment and not to interfere with any occupancy right, there is the averment in the written statement that the village has been in the defendant's possession since the date of the resumption. It is by no means clear whether under Exhibits A and B, the appellant is entitled to any and what Mirasi rights and Menkaval lands and if so, whether his claim thereto is good as against the Crown and whether the Crown in any way interfered with it. We are unable to dispose of this part of the case without further inquiry and we shall direct the Judge to try the following issue and return a finding within one month from the date of the receipt of this order. Both parties are at liberty to adduce fresh evidence if so advised, Seven days after the date of the posting of the finding in this Court will be allowed for filing objections.

7. Issue--Whether the plaintiff has any and what Mirasi rights and Menkaval lands in the village of Coramandel--and, if so.

8. Whether he has any cause of action as against the defendant and whether he is entitled to any and what decree in respect of such Mirasi right and Menkaval lands.

9. [The District Judge having returned findings on the above issues, the appeal came on for hearing again and the Court delivered judgment as follows.]

10. Judgment--On the issues sent down the Judge has returned the following finding (1) that a certain mirasi perquisite known as Reddi Merai did attach to the Inam and was collected by former Inamdars; but that such miras formed part of the Inam and was liable to resumption, and that plaintiff has no cause of action in respect of such mirasi perquisite: and (2) that certain Menkaval lands do exist, separate and distinct from the Inam lands, and that plaintiff has a right to recover them from the defendant.

11. The plaintiff-appellant has put in a Memorandum of Objections to the finding as to the Mirasi rights, and the defendant-respondent takes objection to the finding as to the Menkaval lands.

12. With reference to the Menkaval lands it appears from the record that 47-11-0 cawnies of land were formerly allotted as an Inam for the Head

watchman of the village, that in Fasli 1212 the said Inam was resumed and made over to the Inamdar, the Kazi for the time being of the mosque, a

quit-rent of Rs. 213-11-8 per annum being fixed thereon. This quit-rent was paid by the Kazi for the time being and by the plaintiff up to the year

1873 when Government resumed the grant of the village. The Melvaram of the said Menkaval lands was paid by the cultivators first to the Kazi

and then to his assignee, the present plaintiff. The defendant's 4th witness was karnam of the village of Coramandel from 1877 to 1886. He

deposes that before the resumption of the village the raiyats who cultivated the Menkaval lands paid varam to the Inamdar, that the Inamdar paid

to Government a fixed amount for the Menkaval lands, whether the lands were cultivated or not, the Government having nothing to do with the

raiylats who cultivated the said lands before 1877 when they issued pattas to them. The order of resumption makes no reference to the Menkaval

lands, but directs the resumption of the village which was originally granted as the endowment of the Kazi and the payment to the Kazi of a monthly

allowance equivalent to the net annual income of the village.

13. The grant of the Menkaval Inam to the Kazi in Fasli 1212 was an act entirely distinct from the grant of the village as an endowment of the Kazi

and appears to have been an act of grace by the then Government. That grant never having been resumed or cancelled the issue of pattas to the

raiylats was ultra vires. Government are entitled to the sum of Rs. 213-11-8 per annum from the plaintiff who alone can deal with the cultivators of

the Menkaval lands.

14. With reference to the plaintiff's claim that the village is a Mirasi village and that he has a right of occupancy in the whole village, we observe

that there is no satisfactory evidence of the exercise of any Mirasi right by any of the plaintiff's predecessors in title. We have been referred to

Exhibits G, VIII and XX as showing that the Kazi exercised Mirasi rights. Exhibit G is an extract from the Inam Register, 1862, and contains a

remark made by the Inam Deputy Collector that the Shrotriendars are the Sub-Mirasidars of the village. What the meaning of this statement is is

not apparent, but it is a mere expression of opinion and is of no value as a piece

of evidence. Exhibit VIII is an extract from the Minutes of Consultation of the Madras Government, dated 26th September 1854, and shows that Government repudiated the right of the Kazi to dispose by sale of any of the lands included in the Inam village of Coramandel, on the ground that the grant was a service and not a personal grant. Exhibit XX is the report of the Tahsildar to the Collector in February 1874. In that report he states that the Inamdar and the Izaradar had received Reddi Merai at the rate of 2 measures per kalam and that as the Inamdar appears to have sold land, which he could not have done, if he were entitled to Melvaram alone, the Tahsildar concludes that the Inamdar possessed the Kudivaram right also. We cannot attach any weight to this vague expression of opinion in the face of the strong oral evidence adduced by the defendant to show that the village is not a Mirasi village and that the Inamdar possessed no Mirasi rights.

15. The plaintiff will be entitled to a decree for possession of the Menkaval lands. In other respects the decree of the lower Court is confirmed and the appeal dismissed with costs.