(1954) 03 MAD CK 0006

In the Madras High Court

Case No : C.M. P. No. 13615 of 1950

Kotigari M. Rangiah Chetti — APPELLANT

Vs

The Andhra State — RESPONDENT

Date of Decision : 22-03-1954

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(19)

Citation : (1954) 03 MAD CK 0006

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Advocate : V. Vendantachari and T. Rangaswami Ayyangar, for the Appellant;

Judgement

Balakrishna Ayyar, J.—The village of Annur formed part of the ancient Zamindari of Karvetilagar. In 1890 an extent of about 300 acres of

land, wet and dry, in this village, known as Khas Bhagayat, was mortgaged by the zamindar to the father of the present petitioner, It is stated in

Chinnarigadu v. Ringayya AIR 1935 Mad. 789, that ""these two terms Khas Bhagayat indicate that the land is held by the zamindars and cultivated

by themselves for their own benefit."" It is claimed that this area was the home-farm land of the zamindar. In 1916 the mortgagee filed a suit on his

mortgage and in 1919 the usual preliminary decree for sale was passed. In 1922 the property was sold in auction by the order of the Court and

purchased by the decree holder. In 1923 the Khas Bhagayat was separately registered in the name of the auction purchaser in the office of the

Collector. Subsequently disputes arose between the auction purchaser and certain ryots over the question whether latter were entitled to

occupancy rights in these lands. The matter came up to this Court and was disposed of by the decision in Vadiyangati Chinnarigadu Vs. Kotigari

Rangayya Chetty, , This Court upheld the conclusion of the lower appellate Court that the property constituted home-farm land. On 12th

December 1950 the Government issued a notification in the Pert Sr. George Gszeue, notifying Annur Khas Bhagayat. an a zamin estate. The

petitioner thereupon applied to this Court for the issue of a writ to quash this notification (1).

2. Mr. Vedantachari, the learned Advocate for the petitioner, argued the matter with his very comprehensive knowledge of the subject. His

reasoning consisted in the main of two steps :

1. The area known as Annur Khas Bhagayat does not by itself constitute a separate estate. It forms only part of the larger zamin estate out of

which it was carved out; it is only a fragment of that estate and has no separate existence as an estate.

2. A combined reading of Ss. 3 and 20 of Madras Act XXVI of 1948 will make it plain that the Government are not entitled to any rights in the

Khas Bhagayat larger than those which the zamindar had in it. The zamindar was not entitled to possession of this land. Nor was he entitled to

collect any rent from this land. The portion of Government in relation to this land is not any different and the Government are not entitled either to

dispossess the petitioner or claim any rent from him.

3. This is how Mr. Vedantachari elaborated his arguments as regards step (1).

4. Except in respect of inams, with which we are not now concerned, Madras Act XXVI of 1948 accepts the definition of estate given in the

Madras Estates Land Act, 1908. That definition appears in S. 3 and comprises five categories of estates. It is not claimed on behalf of the

Government that this Khas Bhagayat falls into category (a), (c), (d) or (e). But it is said on the other side that it falls into category (b). Now, Annur

Khas Bhagayat is less than a whole village. Before any area can fall under any of the five categories enumerated in S. 3 (2) of Act 1 of 1908, its

extent must be not less than a whole village.

(1) Look at S.3 (2)(e) which deals with portions of estates falling under S. 3 (2) (a), (b) and (c). It reads :

any portion consisting of one of more villages of any of the estates specified above in Cls. (a), (b) and (c) which is held on a permanent under

tenure.

4. This makes it plain that the portion referred to in Cl. (e) must be at least a whole village. How then can anything which is less then a village in

area satisfy the definition in S. 3 (2) (a), (b) or (c) ?

(2) Now look at S. 3 (2) (d) where an in am village is defined. The definition requires that the area must be not leas than a whole village. To that

effect are the decisions of this Court. When in the case of an in am the legislature insisted that in order to qualify to be an estate its area should be

not less than the whole of a village, is it likely that in the case of a zamindari which ordinarily comprised very much larger areas, the legislature

would have provided that areas smaller than a village should be regarded as an estate ?

5. To reinforce his point Mr. Vedantachari referred to the decision in Gadadkara Das Bavaji v. Suryanarayana Patnaik 44 Mad. 677=14 L.W.

453, 679 the learned Chief justice observed :

Therefore as regards inams outside the large estates coming under Cls. (a), (b) and (c), it is clear that the legislature did not wish the Act to apply

between the inamdar and his tenant where the inamdars owned the kudiwaram as well as the melwaram, or where the land was only part of a

village, unless it had been separated from the rest of the village. This being the policy of the Act as regards inams outside large estates as defined in

Cls. (a), (b) and (c), the next question is whether it was the intention of the legislature that the Act should apply to such inams when the lands were

situated within these large estates. Looking at the matter as between the inamdar and his tenants, there seems do strong reason for making the Act

inapplicable where the quit rent is payable directly to the Government and applicable where it is payable to the zamindar or poligar, as in Cls. (a),

(b) and (c). It is prima facie unlikely that the legislature should have intended to apply a different rule in these two cases and, if it did, it would have

so provided expressly.

(3) S. 3 (19) of the Madras Estates Land Act, 1903 defines a village as any local area situated in or constituting an estate which is designated as a

village, in the revenue accounts.

6. This definition requires that village should itself constitute an estate or that the village should be situated in an estate, that is to say, included in it

which necessarily presupposes that an estate is, if not larger in area than a village at least not less than it in extent. This definition of village in Act 1

of 1908 strikes at the root of the contention of the Government that an estate can be smaller than village.

(4) Let us now refer to S. 167 (2), which runs as follows :

The local Government may, be notification, declare with regard to any estate or portion of an estate that a record of rights has been finally

published for every village included therein, and such notification shall be conclusive evidence of such publication.

7. This again assumes that a village is part of an estate and is inconsistent with the notion that an estate can be part of a village.

(5) S. 148 enacts:

When any landholder transfers the whole or a portion of his estate or land, or when any estate or land is partitioned among co-sharers, the

landholder and the transferee or the co-sharer as the case may be, shall give notice.

8. Mr. Vedantachari remarked on the fact that the legislature used both the words ""estate"" and '"'land"" in this section and pointed out that the two

words were used with a definite purpose. The word ""land"" was used to cover cases where the area dealt with was less than a village.

(6) (a) Mr. Vedantachari next supported his thesis by a reference to the history of the relevant legislation. He remarked that the word ""estate '' is

defined for the first time in Madras Act II of 1894 and that the definition has been bodily lifted and transplanted into the Madras Estates Land Act,

1908. The purpose of Act II of 1894 as announced in the preamble, is to amend the law relating to village officers in permanently settled estates, in

unsettled palaiyams and in inam villages, and to make better provision for their appointment and remuneration and other matters connected with the

maintenance of discipline among them. Act II of 1894 was not, therefore, interested in any areas smaller than a village; it did not take any notice of

smaller units. The Act presupposes that there can be no estate which did not include an entire village. The legislature would have been stultifying

itself if when placing on the statute book an Act of the nature of Act II of 1894, it defined an ""estate"" as including an area smaller than a village.

This definition of estate is carried forward without any change into the Survey and Boundaries Act of 1897. When, therefore, in 1908, the legislature adopted the definition given in the older Acts it could not have intended to give the word ""estate"" a meaning different from that in the

earlier Acts; for in that event it would have used a different set of words.

(b) In the years preceding 1922 there was a sharp divergence of opinion over the meaning of the word ""landholder"" in Act I of 1908, which is

reflected in the decision reported in Gadadhara Das Bavaji v. SuryanaTayana Patnaih 44 Mad. 677=14 L.W. 453) and Brahmayya v. Achiraju 45

Mad. 716 (F.B.) The former case was first heard by a Bench of two Judges, Wallis, C.J., and Sadasiva Aiyar, J, and, in view of the difference of

opinion between them it was referred to a Full Bench of three Judges, Ayling, C.J., and Coutts Trotter and Kumar asawami Sastri, JJ. Ayling,

C.J., and Kumaraswami Sastri, J., differed and the case was finally decided in accordance with the views expressed by Coutts Trotter, J. In the

latter case the decision of the Full Bench was given by five Judges. Here too there was a sharp cleavage of opinion. In all, therefore, the learned

Judges considered this question but right through every one of them assumed as something too obvious to be open to argument that an ""estate''''

cannot be smaller than a village.

(7) Separate registration under Act I of 1876 has not the effect of converting what by itself was not and could not have been an estate into an

estate. The order of the Collector directing that part of an estate be registered separately does not by itself make the separately registered portion

an estate if it is smaller than a village. The only effects of registration are (a) to protect the portion separately registered from being proceeded

against for arrears of peishcush due in respect of the estate from which it was carved out, and (b) conversely to protect what may be called the

original estate for being proceeded against for arrears due from the separately registered portion. So far as the Collector is concerned, the act of

registration is almost a mechanical act as Raesam, J. explained in Venkatakrishnamaraju v. Suryanarayana Raju 67 M.L.J. 544=89 L.W. 304. At

page 548 he observed :

So far as the Collector''s functions are concerned his duty is to refuse registration if the defendants do not agree. His work is of a mechanical

nature and does not partake of the nature of a decision.

Reference was made to Butchi Ramayya v. Gundu Ramatma (1952) 2 M.L.J.

408=65 L.W. 916. The head note to the report reads as follows:

The character of lands which were situated in a Zeroyti village forming part of permanently settled estate, did not cease to be such even though

they were obtained by the landholders in exchange for lands in a pre-settlement inam. Civil Courts have no jurisdiction to entertain a suit to eject

tenants from such lands. The nature of the land did not change because of the exchange.

9. Mr. Vedantachari next explained what I have described as the second step in his reasoning. What happens when an estate is notified under

Madras Act XXVI of 1948 is explained in S. 3, which summarises the consequences of a notification. One principal consequence is that the estate

stands vested in the Government free of all encumbrances. Another is that all rights and interests created in or over the estate before the notified

date by the principal or any other landholder cease and determine as against the Government. But this is subject to certain exceptions. The opening

words of S. 3 clearly say :

Save as otherwise expressly provided in this Act.

10. Such express provision is made in Ss. 18, 19 and 20. S. 18 deals with buildings in estates. With that we are not now concerned. S. 19

provides for cases where ryoti or nonryoti land has been sold by the landholder for non-agricultural purposes before the 1st day of July 1945. S.

20 deals with cases not governed by Ss. 18 and 19. Under S. 20(1) where a landholder has before the notified date created any right in any land,

whether by way of lease or otherwise, all rights and obligations arising there under on or alter the notified date, shall be enforceable by or against

the Government. The third proviso to this sub-section empowers Government to terminate the transaction if in their opinion it is in the public

interest to do so, unless the transaction relates to the Private land of the landholder. This proviso, therefore, does not avail the Government once

Annur Khas Bhagayat was all private land. The expression ""whether by way of lease or otherwise"" is large enough to take in a mortgage. The

petitioner is therefore protected by reason of S. 20.

11. It is not possible to escape the operation of S. 20 by saying that the Court sale under which the petitioner now holds the property is not an act

of the zamindar because the Court sale was only the legal sequel, a natural and almost inevitable sequel of the mortgage. S. 20 (1) specifically says

that the transactions entered into before the notified date by the landholder shall be deemed to be valid. If the transaction is valid, the legal

consequences arising there from must also be valid.

12. Reference was made to Srinivasa Aiyangar v. State of Madras 65 L. W. 735,. At page 742 it was observed :

We cannot also accept the argument that S. 20 should be confined only to leases. S. 20 expressly saves all interests created by the landholder in

any land whether by way of lease or otherwise before the notified date. If S.30 takes in a permanent lease on a fixed rent, we do not see why

minor inams subject to jodi which are similar to permanent leases on fixed rent should be treated differently. The argument that S. 20 should be

confined to leases only is obviously untenable as the section itself says that the creation of interests by the landholder may be '' by way of lease or

otherwise''. We therefore hold that the post-settlement minor inams included in the assets of the zamindari at the time of the permanent settlement

would be protected under S. 20 of the Act and the fights thereunder can be enforced against the Government. The notification of the Government

under Madras Act XXVI of 1948 notifying the one-sixteenth part of the village included in the assets of the zamindari as an under tenure estate is

clearly wrong.

13. To these arguments of Mr. Vedantachari the learned Advocate General, Andhra, made the following reply :

(1) S. 3(2) (b) of Madras Act 1 of 1908 merely speaks of ""any portion of such permanently settled estate or temporarily settled zamindari which is

separately registered in the office of the Collector.

14. The definition does not say that the portion so registered shall be not smaller than village in area and there is no warrant for adopting a

construction which would require the addition of new words to the statute. The construction proposed by Mr. Vedantachari would acquire that the

words ""not being smaller than a village"" should be inserted immediately after the words "" any portion "" occurring in the definition. This cannot be

done.

(2) The argument based on S. 3 (2) (e) is misleading. The requirement in S. 3 (2) (e) that the area referred to in it shall include one or more

villages, does not have the effect of introducing such a qualification or limitation into S. 3(2)(b). S. 3(2)(e) would apply only in relation to such

estates defined in S. 3(2) (a), (b) and (c) as are large enough to satisfy the further requirement about size that is included in the definition in S. 3 (2)

(e). In other words, under S. 3 (2) (b) you can have two classes of estates, some comprising one or more villages and others comprising less than

a village. It is only in relation to the former category, comprising one or mere villages, that S. 3 (2) (e) will take effect.

(3) S. 2 (16) of Madras Act XXVI of 1948 defines a zamindari estate as consisting of (i) an estate under S. 33 (2) (a) of the Estates Land Act,

minus ali estates satisfying the definition in S. 3 (2) (b) and S. 3 (2) (e);

(ii) an estate under S. 3 (2) (b) minus all estates under S. 3 (2) (c)

(iii) an estate under S. 3 (2) (c) minus all estates under S. 3 (2) (e). This definition assumes that everything which is separately registered is an

estate.

(4) There is nothing in the history of the matter to support the contention of Mr. Vedantachari. What are now called private lands were taken into

account and included in the assets of the zamindari before the peiscush on the estate was fixed. Cl. VIII of Regulation XXV of 1802 which created

the Permanent Settlement in this State enacts:

Proprietors of land shall be at free liberty to transfer, without the previous consent of the Government their proprietary right in the whole, or in any

part of their zamindaris; such transfers of land shall be valid, and shall be respected by the Courts of Judicature and by the officers of Government.

15. Then follows a proviso which is not of present interest. The right of alienation given by Cl. VIII of the Regulation does not require that the

portion alienated shall not be smaller than a village in extent. It says "" any part of their zamindari '''' and the expression is comprehensive enough to

cover ten cents of land as effectively as ten villages.

16. Clause 9 of the Regulation also contemplates a sale of a part of a zamindari for the realisation of arrears of public assessment, or for the

satisfaction of a decree of a Court of Judicature. Here too there is no requirement that the various portions should be not smaller in area than a

village. The second sentence of Cl. 9 of the Regulation lays down this injunction;

''The assessment to be fixed in this case on the separated lands shall always bear the same proportion to the actual value of the separated portion

as the total permanent Jummah on the zamindari bears to the actual value of the whole zamindari.

17. There is no instruction here about areas, whether such should be at least equal to a village.

18. Later on in 1876 came Act I of that year. The result of that enactment was to make the portion of a zamindari which is separately registered a

separate estate for all purposes. Separate registration is permissible only where there has been a change of owners. See Venkatesivard Yettiappa

Naicker v. Alagoo Mootoo Sarvagafen 8 M. I. A. 327 . and Maharaja of Vizianagram v. Collector of Vizagapatam 38 Mad. 1128-1 L.W. 635..

At page 1131 the following passage occurs:

So that what the Collector has to do is to find out who is the present owner, and the intention of the legislature is that it should be only when there

has been a change of ownership that separate registration and assessment should take place.

19. The separate registration is a recognition of the fact that there has been a change of ownership. It has very frequently happened in the past that

portions of a zamindari were brought to sale for arrears of public assessment. There is a rule that only so much property as is necessary to realise

the arrears due to Government should be brought to sale. So it must have frequently happened that hamlets or portions of villages have been

brought to sale and sold and purchased by strangers. By reason of the purchase they would become entitled to have their portions separately

registered. It could not have been the intention that even after such separate registry the separated portions should be treated as part of the original

estate.

20. The argument of Mr. Vedantachari in so far as it is based on Act II of 1894 is untenable. In Brahtnayya v. Achiraju 45 Mad. 716 (F.B.)

Venkatasubba Rao J. stated at page 761:

Turning to the definition of the word ''landholder'' it teems to me that an inamdar of the description in question falls within the first as well as the

second portion of the definition. It is said that the land of which the inam consists is not a part of the estate under S.3 (5). The terms of the reference assume that the land in question is within a zamindari. If physically the land is within a zamindari, I fail to see how the land is not part of an

estate. Would it be argued that purchaser of a part of the estate does not come within the definition on the ground that though the part he

purchased is geographically within the limits of the estate it is still not a part thereof ? I am unable to accept this contention.

21. And this view commended itself to the Privy Council as may be seen from the case in Narayanaraju v. Suryanarayudu (1939) 2 M.L.J. 901-

50 L.W. 349 (P.C.). In the same case, the Privy Council repelled the contentions based on the presumed intention of the legislature. They

observed :

They discard all argument from the presumed general intention of the Act as treacherous and inconclusive.

The decisions in Gadadhara Das Bavji v. Suryanarayana Patnaik 44 Mad. 677=14 L.W. 458. and Brahmayya v. Achiraju 45 Mad. 716 (F.B.)

are Oreally not in point. In neither of these cases was the portion in question separately registered.

22. Section 20 of Madras Act XXVI of 1948 has no application because this land being separately registered is itself a separate estate. The

landholder in relation to this past is the petitioner himself and therefore their is no question of any alienation by the principal or any other landholder.

23. The learned Advocate General then asked : If the contention of Mr. Vedantachari were right then Madras Act I of 1908 would not apply to

this Annur Khas Bhagayat; can it be said that the ryots in this area, assuming for a moment that this Bhagayat includes ryoti lands also, would lose

their occupancy right;? No legislature could have intended to produce such a result.

24. Assuming for a moment that Annur Khas Bhagayat continues to form part of the original estate, then in order to bring the petitioner within the

scope of S. 20 there must be rights and obligations outstanding on the notified date. When no rights or obligations are outstanding on the notified

date as is the case of the petitioner, S. 20 will not apply. If on the other hand the petitioner stands on the mortgage that was executed in 1890 he

must seek relief under S. 43 of the Act.

25. The questions raised are of some little difficulty, but, on balance I prefer the

reasoning of Mr. Vedantachari. It is no doubt true that the holder

of a minor inam has been recognised to be a landholder. But from that it does not follow that a minor inam is an estate in itself. I have not known of

any case in which any area smaller than a village has been treated or recognised as an estate. There has been an enormous mass of litigation in

connection with zamindari, several cases going up to the Privy Council. But I was not shown a single case in which an area less than a village was

at any time recognised as an estate.

26. The argument of the learned Advocate General based on S. 2 (16) of Act XXVI of 1948 seems to me to contain two allacies, S. 2 (16) does

not say that whatever is separately registered is a zamin estate irrespective of its extent. The definition itself assumes and postulates that but for the

exclusion made by the definition estates falling within the definition in S. 3 (2) (b) would be part of estates as defined in S. 3 (2) (a).

27. It is no doubt true that to give full effect to the contentions of Mr. Vedantachari one must be prepared to read the definition in S. 3 (2) (b) as

though the words "" not being smaller than a village "" had been inserted immediately after the words "" any portion "" and that such a step is not to be

lightly undertaken. But then, it must be realised that the definition was bodily lifted from Act II of 1894 and that in that enactment the definition

would have made no sense if the area involved was smaller than a village. While bearing in mind the words of the Privy Council against

interpretations based on the presumed intentions of the legislature, one is not precluded from examining the provisions of the Act to find out what

the intention was. Act II of 1894 was intended to make provision for village establishments i.e., to village munsifs, karnams, talayaris, and the like

and no area smaller than a village could even have been in the mind of the legislature.

28. The argument of Mr. Vedantachari based on S. 3 (19) of Act I of 1908 has also very considerable force.

29. The separate registry in the office of the Collector has no effect other than that of apportioning the liability for peishcush on the two portions

into which the estate is separated. The processes of alienation and sub-division do not have the result of making the separated portions estates in

themselves. For various purposes they still form part of the original estate from which they were broken off. To mention only one, the village

establishment would still continue joint and the proprietor would be the person in whose name the estate is for the time being registered in the office

of the Collector. Where the estate is registered in the names of two or more persons, the proprietor will be the person who is recognised by the

other joint owners as the manager of the estate. In case of dispute the proprietor will be the person recognised by the Collector as the senior

owner. I do not think that Annur Khas Bhagayat can be treated as a separate estate. If it is not a separate estate, I find it difficult to see how the

application of S. 20 can be avoided. The mortgage executed by the zamindar in 1890 was valid and the sale on the foot of that mortgage was the

natural, legal and probable consequences of the mortgage. The rights obtained under the decree naturally flow out of the mortgage and would have

as much validity as the mortgage itself. However, it is not necessary for me to go further into this aspect of the matter because the only prayer in the

petition is that the notification in respect of Annur Khas Bhagayat be quashed. In view of my finding that it cannot be treated as a separate estate,

the petition must be and is allowed with costs. I fix the Advocate''s fee at Rs. 250. remains to add one word. In the present petition the petitioner

has claimed that the entire extent of land included in this Annur Khas Bhagayat is private land. In the counter which they filed, the Government did

not controvert the fact. The learned Advocate General however, stated that he was not admitting this fact. I merely desire to make it clear that I am

not giving any decision on this matter.

