
(1985) 07 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 11205 of 1983

K.V. Swaminathan and others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 25-07-1985

Acts Referred:

Tamil Nadu Levy of Ryotwari Assessment on Freehold Lands Act, 1972 — Section 21(1)

Citation : (1985) 07 MAD CK 0007

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Advocate : N. Ganapathi and K.R. Govindarajan, for the Appellant;

Judgement

Ratnam, J.—In this writ petition, the petitioners have prayed for the issue of a writ of certiorari to quash a notification issued by the first

respondent in the exercise of the powers conferred under S. 21(1) of the Tamil Nadu Levy of Ryotwari Assessment on Freehold Lands Act, 1972

(hereinafter referred to as the Act) including an extent of 4333.05 acres in Kumarapalayam Agraharam, Tiruchengode taluk, Salem Dt, in Part I of

the Schedule appended to the Act. The question whether Kumarapalayam Agraharam, comprised in Jagadapadi village is an inam within the

meaning of Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act 26 of 1963 was raised at an earlier stage by some of the

tenants of the hamlet and the history and the nature of the grant came to be considered in a decision of a Division Bench of this Court in Sellappa

Goundan and Others Vs. A. Bhaskaran and Others, . In the absence of the terms of the grant, the relevant entries in the Inam Fair Register extract

were taken into account, and the grant by the Raja of Mysore in 1760, though treated as an inam at the time of the Inam Settlement proceedings

on the basis of which title deeds were also issued, was held to be not an inam within the meaning of S. 2(4) of the Tamil Nadu Inam Estates

(Abolition and Conversion into Ryotwari) Act 26 of 1963 or even a part of an inam within the meaning of S. 2(11) of that Act. The correctness of

this decision was questioned before the Supreme Court in K.M. Sengoda Goundar and Others Vs. State of Madras and Another, . While

disposing of the appeal the Supreme Court referred to the history of this village as set out in Sellappa Goundan and Others Vs. A. Bhaskaran and

Others, and the original grant was held to be one made in consideration of the payment of a sum by the grantees and the grant was, therefore, an

inam grant. Adverting to the treatment of the grant as an inam at the time of the Inam Settlement proceedings and the issue of title deeds, the

Supreme Court held that the inam title deeds would not operate to enlarge or abridge the right of the inamdars under the original grant. An attempt

made to establish that there was a resumption by Thippu Sultan under the grant was not countenanced and it was found that Thippu Sultan merely

confirmed the previous grant and that there was no change in the original character of the grant, which was one for consideration. On those

conclusions, the Supreme Court affirmed the decision arrived at by this Court in Sellappa Goundan and Others Vs. A. Bhaskaran and Others,

holding that Kumarapalayam Agraharam is not an inam within the meaning of S. 2(4) or part of the inam village within the meaning of S. 2(11) of

the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act 26 of 1963. It is thereafter that the first respondent by the impugned

notification under S. 21(1) of the Act proceeded to include Kumarapalayam Agraharam in the Schedule on the ground that it was freehold land

within the meaning of S. 2 (d) of the Act. The case of the petitioners is that Kumarapalayam Agraharam village is not freehold land within the

meaning of S. 2(d) of the Act, and that by the impugned notification it could not be included in the schedule for the purpose of ryotwari

assessment. In the counter-affidavit filed by the respondents, it was stated that Kumarapalayam Agraharam was declared to be not an inam estate

and also not as a part of the inam estate but since it was subject to confessional assessment, it was decided to bring it under the purview of the Act

in order to bring these lands also on a par with similar lands in ryotwari areas for purposes of assessment.

2. Thus, the short question for consideration is, whether the impugned notification deserves to be quashed on the ground that Kumarapalayam

Agraharam does not constitute freehold land. It has to be noted at this stage that the petitioners have not disputed the power of the Government to

include by notification from time to time any freehold land. The learned counsel for the petitioners contended that the lands in question would not

be freehold lands as defined under S. 2(d) of the Act and the notification treating it as such land and including it in the Schedule to the Act, is bad.

On the other hand, the learned Advocate General submitted that the prior history of the lands clearly showed that they had been held either free

from a demand of land revenue or at least on payment of a concessional land revenue attracting in either event S. 2(d) of the Act. Under S. 2(d) of

the Act freehold land means any land held—(i) free from demand of land revenue, or (ii) subject to the payment of concessional land revenue and

specified in Part I of the Schedule to this Act and includes any land—(1) in respect of which land revenue or other tax in respect of such land has

been assigned in favour of any religious institution or charitable endowment in lieu of cash allowance known as mohini allowance, and (ii) which is

specified in Part II of the Schedule to this Act. As noticed in *Sellappa Goundan and Others Vs. A. Bhaskaran and Others*, Kumarapalayam

Agraharam was one of 12 hamlets comprised in the village Jagadapadi and it was granted not by way of gift of either the land or any portion of the

assessment thereon, but the grant was for consideration paid by the grantees and not attributable to the beneficiation of the ruler. It also appears

that though the grant was rent free, yet, it lacked the element of beneficiation but had been made in consideration of payment by the grantee. 6 out

of 12 hamlets were later resumed by Thippu Sultan and the successors of the original grantees were allowed to remain in possession of the rest

without any obligation to pay rent on that portion. The title of the successors of the grantees in regard to the lands in their possession was

confirmed by the British and in the course of the enquiry by the Inam Commission it was found that the inam was enjoyed in 110 virittis, though

only persons owning 90 virittis appeared and put forth their claims. This resulted in the confirmation of the inam subject to the assessment of Rs.

566-11½/3 in addition to quit rent of Rs. 299½/3. From the aforesaid proceedings, it is clear that though subsequently at the time of the

Inam Settlement, assessment was levied, earlier, the lands appear to have been held free from demand of land revenue. An aghaharam grant is a grant of a village or part thereof to a community of Brahmins held either revenue free or at reduced rate of assessment (Vide *1/2 Land Tenures*, by S. Sundararaja Iyengar, 1915 Edn. at page 114). It is thus seen that at the time of the grant the land appear to have been granted only free from land revenue. Therefore, if at the inception the inam had been so granted, the Settlement proceedings and the issue of title deeds would not in any manner alter or abridge the rights under the original grant. Therefore, on the basis of the history relating to Kumarapalayam Aghaharam village and the decisions referred to earlier, it is clear that the lands in question had been at the inception held free from any demand of land revenue and that would suffice to clothe these lands with the character of free-hold lands within the meaning of S. 2 (d) of the Act. Even on the footing that the confirmation of the inam subject to the assessment can be taken into account, it is seen from column 21 of the Inam Fair Register extract referred to in Sellappa Goundan and Others Vs. A. Bhaskaran and Others, that a total quit rent to Rs. 369 was fixed as against an assessment of Rs. 566 $\frac{1}{2}$ 11 $\frac{1}{2}$ 3 in addition to quit rent of Rs. 299 $\frac{1}{2}$ 12 $\frac{1}{2}$ 00. Treating this as payment of land revenue, it would be a case of payment of concessional land revenue so as to attract the definition under S. 2 (d) (ii) of the Act. Therefore looked at from any point of view, Kumarapalayam Aghaharam would be freehold land within the meaning of S. 2 (d) of the Act, and could be dealt with and included under S. 21 (1) of the Act as such. In view of this, it is not possible to accept the contention of the learned counsel for the petitioners.

3. The learned counsel for the petitioners next contended that the rights of the petitioners in the lands cannot be permitted to be interfered with under the guise of including it in the Schedule to the Act for purposes of ryotwari assessment. In this context, the learned Advocate General drew attention to the stand taken in paragraphs 7 and 9 of the counter affidavit to contend that there is no question of abolition of any of the interest of the petitioners or disturbance of the possession of those in possession and stated that the object was only to bring the lands in question also on a par with similarly situated ryotwari lands for purposes of assessment and that would not in any way disturb the possession of the land by the

landholders. Attention was also drawn to G.O.Ms. No. 645 Commercial Taxes, and Religious Endowments department, dated 10th June, 1983,

in the Salem District Gazette, Extraordinary, as enabling the petitioners to object to the issue of rough pattas and also the opportunity to contest the correctness of the orders passed by preferring a revision as provided in XVI (5) that Government Order. The object of the Act is only to provide for the levy of ryotwari assessment on freehold lands in the State of Tamil Nadu. It does not purport to affect or alter in any manner other rights in the freehold land. Even a claim for patta can be objected to and against any decision therein further remedies have also been provided for.

Therefore, there is absolutely no basis whatever for the apprehension of the petitioners that their rights in the land are likely to be interfered with by the application of the provisions of the Act to the lands in question. As a matter of fact, it has been very clearly stated in paragraphs 7 and 9 of the counter affidavit that the object of the notification is only to bring the lands in question on a par with similarly situated ryotwari lands for purposes of assessment and nothing more. There is, therefore, no substance in the objection of the learned counsel for the petitioners that the rights of the petitioners in the lands are likely to be interfered with as a result of the notification and that therefore, the notification should be quashed. For the foregoing reasons, the rule nisi is discharged and the writ petition is dismissed with costs of the first respondent. Counsel's fee Rs. 250.