
(1950) 03 MAD CK 0028
In the Madras High Court
Case No : S.A. No. 829 of 1947

Lachuma Goundan and Others		APPELLANT
	Vs	
Pandiyappan alias Annamalai Goundan and Others		RESPONDENT

Date of Decision : 23-03-1950

Acts Referred:

Citation : AIR 1951 Mad 679 : (1951) 2 MLJ 658(1)

Hon'ble Judges : Viswanatha Sastri, J

Bench : Single Bench

Advocate : T.L. Venkatarama Iyer, for the Appellant; M.S. Venkatarama Iyer, K.R. Krishnaswami Iyer and S.P. Subramania Iyer and Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Viswanatha Sastri, J.—Plaintiffs 1, 2, 5, 6 and 8 are the appellants in this second appeal. The suit was filed by the plaintiffs in a

representative capacity on behalf of the villagers of Nadamuthur and Chinnamuthur against the villagers of Periamuthur and the Province of Madras

for a declaration that they were entitled to the usual mamool supply and distribution of the water of the Dasabandam channel taking off from the

south Pennar river, for 24 hours as against 12 hours of the defendants, or, in the alternative, for effecting any other fair and equitable distribution of

the water flowing in the channel in proportion to the respective wet ayacut extents of the three villages. There was also a claim for Rs. 100 by way

of damages against the defendants. The suit has been dismissed by the courts below.

2. From the channel styled the Dasabandam channel taking off from the south Pennar river, the wet lands in the three villages have been irrigated

from a long time. The channel is an artificial channel which vests in the Government. The extent of wet cultivation in the two villages of the plaintiffs is 100 acres while the extent of wet cultivation in the defendants' village is 75 acres, but the lands of the defendants' village are on a higher level and water has to be baled out from the channel. The second defendant who is the Dasabandam inamdar has the duty of keeping the channel in good repair. It may be stated that all the three villages are ryotwari villages and there have been, since 1939, quarrels between these villagers regarding the distribution of the water " flowing in this channel, which culminated in an order of the Sub Collector of Hosur, dated 13-3-1940, by which he directed that the village of Periamuthur should have 12 hours of exclusive supply during day time and the villages of the plaintiffs should have their turn of 12 hours during night time. The order of the Sub Collector was confirmed on 1-5-1940 by the Collector of Salem. The plaintiffs, feeling aggrieved by this order, have brought the present suit.

3. Several witnesses have been examined In the case and some documents have been filed to prove the usual method of distribution by turns of the channel water before the disputes arose between the parties. On this point both the courts below found that there was no documentary evidence, or acceptable oral evidence, to prove the usage set up by the plaintiffs regarding the turn of water. It was also held by the courts below that the mode of distribution now ordered by the Collector was not an unfair or inequitable distribution of the channel water having regard to the lie of the lands and the needs of the villagers. It was also held by the courts below that the plaintiffs have not been damnified to any extent by the order of the Government regulating the supply of water and, therefore, their claim for damages was unsustainable.

4. Mr. T. L. Venkatarama Aiyar for the appellants has challenged the findings of the courts below on all these points. In my opinion it is unnecessary to consider many of the matters adverted to in the course of the arguments by the learned counsel in view of the allegations in the pleadings and the finding that no injury or damage has been caused to the plaintiffs.

5. Beginning with "Kristna Aiyar v. Vencatachala Mudali", 7 M. H. C. R. 60 it has been held in a series of decisions of this court that the

Government has a right to distribute the water of Government channels among ryotwari proprietors holding wet lands in the ayacut of the channel, the only limitation on their power being that they should not disturb existing arrangements for the supply of water without providing an equally convenient source of supply of water necessary and sufficient for the cultivation of their wet lands. The rights and obligations as between the Government and ryotwari proprietors in the matter of the supply of water for irrigation purposes rest largely on custom and usage and they have been expounded in the decisions of this court from time to time. In "Sankaravadrelu Pillai v Secretary of State", 28 Mad 72 : 15 ML J 32 and "Secretary of State v. Muthuveerama Reddi", 34 Mad 82: 6 IC 731, it is taken to be settled law that the Government has the right to distribute the water of Government channels for the benefit of the ryotwari proprietors depending upon the ayacut subject to the right of a ryotwari proprietor to whom water had been supplied by the Government to continue to receive such supply of water as would be necessary and sufficient for his accustomed requirements. To the same effect is the decision in "Robert Fischer v. Secretary of State", 32 Mad 141 : 2 IC 325. The Government in exercising its prerogative right of distribution of water flowing in Government channels should not inflict sensible injury on ryotwari proprietors who have been accustomed to receive a supply of water sufficient for the purposes of irrigating their wet lands. Subject to the aforesaid conditions, it has been recognised by decisions that the Government has the right to change the source of irrigation or the method of distribution by which ryotwari proprietors have been supplied with water and also to regulate the use of the waters flowing in artificial channels constructed by or belonging to the Government so as to ensure a fair and equitable distribution of water among all the ryotwari proprietors depending on the ayacut of the channel. A ryotwari proprietor could not plead, as against the Government that he has an absolute right to all the volume of water flowing through a particular channel acquired either by grant or by prescription; nor can he object to the Government allowing other ryotwari proprietors to utilise the water of a Government channel unless the usual supply of water necessary and sufficient for the cultivation of the wet lands of the former, is prejudicially interfered with. It may here be observed that though the ryotwari proprietor is ordinarily spoken of as being entitled to the usual and

accustomed supply of water, there is no corresponding obligation on the part of the Government to find the required supply of water at any cost on

pain of being held liable in damages for default. The obligation of the Government is to supply water necessary and sufficient for the accustomed

requirements of the ryotwari proprietor so long as such supply is not adversely affected by natural causes such, as a deficiency of rainfall or

scarcity of water in the rivers from which the supply channels take off. From this it follows that the ryotwari proprietor has a claim against the

Government only when the Government diverts, to his prejudice, water which is available in the channel so as to materially diminish the supply of

water that he had been accustomed to receive, from the channel for the cultivation of his wet lands. In other cases the interference by the

Government with the existing rights of irrigation from artificial channels constructed by Government is not an actionable wrong and the ryotwari

proprietor is not entitled to insist that the entire volume of water which had been flowing through the artificial channel, should, for all time, be

allowed to run along the channel without diminution or diversion by the Government. In other words, damage to the ryotwari proprietor, actual or

inevitable is the gist of the action as well as the basis of Government's liability.

6. Judged in the light of these principles I am of opinion that the plaintiff's suit must fail. There is no allegation in the plaint, or in the notice which

preceded the plaint, that the order of the Government in fixing the turns for the distribution of the water flowing in the channel in question has in any

way led to a diminution in the supply of water necessary and sufficient for the cultivation of the wet lands in the plaintiffs' villages. All that the

plaintiffs say is that they had a mamool right of irrigation by which the water flowing in the channel ought to be divided in the proportion of the area

of the respective villages. They do not say that the water flowing in the channel, as a result of the order of the Collector regulating the turns of the

villages, has injuriously affected the cultivation of their lands, or deprived them of water which was necessary for the cultivation of their wet lands

under the ayacut of the channel. The plaintiffs proceeded on the basis that they had an absolute right to all the water flowing in the channel

according to the extent of their lands as compared with the area of the defendants' village. This is not a legally sustainable claim. The written

statements of the defendants raise pointedly the contention that the action of the Government was not an illegal or improper act and that the

plaintiffs had no cause of action in the absence of any allegation of any damage that had accrued, or that must necessarily accrue, as the result of

the action of the Government. The findings of both the courts below is that no such damage has occurred, or is likely to occur. On this ground

alone, without considering the other matters discussed in the judgments of the courts below, I hold that the second appeal fails. I therefore dismiss

this second appeal with costs one set.

7. Leave to appeal is refused.