

(1972) 11 MAD CK 0012
In the Madras High Court

M. E. Muthirula Mudaliar

APPELLANT

Vs

M. E. Nataraja Mudaliar and Others
Executive Officer
Vs The Special Tahsildar for Land Acquisition and Others

RESPONDENT

Date of Decision : 17-11-1972

Acts Referred:

Land Acquisition Act, 1894 — Section 30

Citation : (1978) 87 LW 643 : (1974) 1 MLJ 129

Hon'ble Judges : Palaniswami, J

Bench : Division Bench

Judgement

Palaniswami, J.—These three appeals arise out of an order of the Subordinate Judge of Madurai made in a reference u/s 30 of the Land

Acquisition Act, 1894. For the purpose of Madurai Neighbourhood Project, R.S. No. 161/2 measuring 2 acres 98 cents in the Village of

Tallakulam in Madurai Taluk was acquired. Rival claims were put forward as regards the compensation. Therefore, the Acquisition Officer

referred the matter u/s 30. Claimants 1 to 3 and 5 to 8 contended that the land was granted in inam of both warams to the ancestor of one

Periyathambi Velar for the purpose of rendering service of supply of new pots to Kallalagar Devasthanam Temples, that Periyathambi Velar sold

away one-half of the property to the first claimant and the other half to the second claimant and that by reason of these purchases, claimants 1 and

2 were entitled to the entire compensation in equal halves. The fourth claimant Audimathiriyar claimed compensation in respect of 75 cents alleging

that he and his ancestors were in possession thereof from time immemorial. His contention was that what was granted originally was melwaram

only in favour of the ancestor of Periyathambi Velar. Kallalagar Devasthanam, the

ninth claimant, contended that the inam was granted to the holder of potter service in his capacity as holder of that service in the temples and that the descendants of the grantee had no right of alienation and that the alienations were void and did not confer any title upon the alienees. The Devasthanam contended that the entire compensation should be paid to it for the purpose of regranteeing the property under the provisions of the Minor Inams Abolition Act, 1963 (Madras Act XXX of 1963).

2. The Court below held that the original grant was of melwaram only and the grant was not to an office pertaining to any temple. The Court below upheld the alienations under which claimants 1 and 2 claimed title and found that claimants 1 to 8 were entitled to Kudiwaram interest in certain proportions and that claimants 1 and 2 were entitled to melwaram interest and that compensation was divisible accordingly. Aggrieved by this order, the first claimant has filed A.S. No. 589 of 1967, whereas the second claimant has filed A.S. No. 848 of 1967, their contention being that they are exclusively entitled to the entire compensation in equal shares. The Executive Officer of Kallalagar Devasthanam has filed A.S. No. 8 of 1968, contending that the grant was of both warams, that the inam was inalienable and that the entire compensation should be secured for the continuance of the service.

3. Neither side let in oral evidence. The parties were content to take a decision only on the basis of the documents produced by them. It was the common contention of claimants 1 to 3 and 5 to 8 that what was granted in inam consisted of both melwaram and kudiwaram in connection with the service of supply of pots to Kallalagar Devasthanam Temples. The only claimant, who put forward the contention that the subject-matter of the grant consisted of only melwaram, was the fourth claimant. He vaguely alleged that from time immemorial an extent of 75 cents, out of the acquired property, was in the possession of his family. He did not specifically plead that his family had acquired title to the said extent by adverse possession. It was not his case that both warams had been granted in inam to the service holder and that in denial of the right of the said service holder his family enjoyed 75 cents and acquired title by adverse possession. To questions put by us, the Counsel appearing for several claimants, except the Counsel for the Devasthanam, frankly conceded before us that the

claim to share the compensation is not based upon adverse possession, nor on the ground that kudiwaram had been granted in favour of their ancestors. Their only contention was that their ancestors were already in possession of the land as riots that what was granted consisted of the melwaram only. The Counsel for claimants 1 and 2 contended that as alienees from the service holder, these claimants were entitled to the entire compensation. In these circumstances, the only question that arises for consideration, on the submission made before us, is whether the grant consisted of both warams or only of melwaram.

4. The said question had been answered by the Court below holding that the subject matter of the grant was only the melwaram on the basis of certain dealings with the kudiwaram right by those in possession as if they were entitled to that right. The Court below totally failed to consider the important documents that have a bearing upon the question as to the subject-matter of the grant, namely, whether the grant consisted of both warams, or only melwaram. Those documents are, Exhibit B-1, which is the title deed issued by the Inam Commissioner, Exhibit B-2 which is the certified copy of the statement given by Muthukaruppa Velar and Exhibit B-3, which is an extract from the Inam Register. The title deed Exhibit B-1 was issued in 1863. The earliest document produced on the side of the claimants who claim kudiwaram right is of the year 1886 only, Exhibit A-

25. The Court below committed a serious error in observing that even prior to the date of the issue of Exhibit B-1, the kudiwaram interest had been dealt with by riots. This clear error totally vitiated his conclusion.

5. No doubt, the original title deed is not produced. But we have, as already pointed out, the title deed issued by the Inam Commissioner and the statement recorded by the Commissioner and also an extract from the Inam Register. The importance of the recitals in the Inam Register has been emphasised by the Judicial Committee in *Arunachalam Chetty v. Venkatachalapathi Guruswamigal* (1919) 37 M.L.J. 460 : AIR 1919 P.C. 62 :

ILR 43 Mad. 253 : 46 I.A. 204. It is pointed out that the Inam Commission enquiry is one made on the spot after hearing witnesses and examining documents with regard to each property. It is also pointed out that where no other evidence is available, utmost importance should be attached to the information set forth in the Inam Register. This view was reiterated by the

Privy Council in Shankara Narayana v. Board of Commissioner, AIR

1948 PC 25 . The view of the Judicial Committee has been accepted and followed by the Supreme Court in C. Periaswami Goundan and Others

Vs. Sundaresa Iyer and Others, . in which it is pointed out :

As observed by the Judicial Committee the entries made in the said register are the result of an elaborate enquiry based upon oral evidence and on

the spot enquiry and scrutiny of available accounts and records.

6. In the above background, the various entries in the Inam Register extract, which is marked as Exhibit B-3, may be; examined. The first major

heading is : ""Class, extent and value of inam"" and this is divided into seven sub-headings. In column (2) the heading is : ""General class to which the

inam belongs"". Under this column the entry is ""Devadayam"". Under column (3) particulars regarding survey number and name of field or fields

comprised in the grant etc. are required to be given. Under this column the entry is : ""Wet. One crop. Kosavansayi"". Survey numbers are also

given. Columns (4) and (5) deal with local measure in terms of acre etc. The extents are given under these columns. Column (6) requires survey

assessment, to be given, whereas column (7) requires revised or present assessment to be given. Under column (6) no entry is made. Under

column (7) details are given showing that the assessment is 12-14-2. The next major heading reads ""Description, tenure and documents in support

of the inam"". This is divided into five columns. Column (8) is important and the heading is ""Description of inam. If for service, it is to be stated

whether the service is continued. If for tanks, buildings, etc. whether they are efficiently kept up."" The information given under this column reads as

follows : ""For the service of supplying pots to the pagoda of Kallalagar in the Melur Taluk. Now rendered"". In column (9), the heading is :

Whether free of tax, i.e., Sarvadumbala, etc., or liable to quit rent, i.e., jodi, kattubadi, bodiga etc. (sic) Amount of latter to be entered"". Under

this column, the entry is ""Tax free"". In column (10), the heading is : ""Hereditary unconditional, for life only or for two or more lives"". The entry is

permanent"". No entry is found in column (11), the heading of which is ""By whom granted and in what year"". Column (12) requires information to

be given about the written instruments in support of the claim. Under this column the information given is : ""Chitra of F. 1212 and 1217. Extent as

per F. 1212 K. V. 64th. 2-4-64th. No excess". The next major head is : "Name and relationship of original grantee and of subsequent and present

holders--length of possession". This again is divided into eight columns. Under column (13) what is required to be given is about the name of the

original grantee. No entry is found therein. Under Column (14), the heading is : "Name entered in the register prepared according to Regulation

XXXI of 1802, or in the permanent settlement accounts, and relationship of persons so entered to original grantee". Under this column, the entry is

: "In F. 1212 and 1217. Muthukaruppan". In column (15) the heading is : "Name entered in the survey or in any subsequent accounts, and

relationship to predecessors. No entry is found under this column. Column (16) requires the name and age of the present owner to be given.

Column (17) requires the place of residence of the present owner. Under these two headings the entry is "Maditc hiyam. Karuppayi. 30". In

column (18), which requires the relationship to the original grantee, the entry is "Grandson's widow". It is unnecessary to refer to the columns (19)

and (20) which are not important. Under the remarks column dealing with the Deputy Collector's opinion and recommendation, the entry is "To be

confirmed under Rule 3, Clause 2". The last column deals with the decision of the Inam Commissioner. Under this column the entry is "Confirmed".

The point to be noted with regard to the several entries is that nowhere it is mentioned that the land was in the possession of anybody else. If the

grant was of mere melwaram only, there was no need to mention details about the lands. The details are more consistent with the grant being of

both the warams than being of more melwaram. If at the time of the Inam Commission enquiry anybody else was in possession, it is not likely that

such a fact would have been failed to be noticed.

7. Exhibit B-2, is a certified copy of the statement given by one Muthukaruppa Velar, said to be the brother of Karuppayee mentioned in the Inam

Register at the time of Inam Commission enquiry. In column (2) of this statement the heading is "The name of the inamdar as entered and the name

of the enjoyer". Under this column, the entry is "Muthukaruppa Velan. Enjoyment Muthukaruppa Velan". In column (7) the heading is "Details

about the inam and terms thereof". Under this column it is stated that the land was granted in inam for the purpose of supplying pots to Prasanna

Venkatachalapathi Temple and Alagar Temple to Muthukaruppa Velan and that the land was being enjoyed by his daughter-in-law, Karuppayee.

It is also stated that Muthukaruppa Velan, who gave the statement, was maintaining the said Karuppayee and was also her brother. It is also stated

that Muthukaruppa Velan was keeping the land in his possession and enjoying the same and maintaining Karuppayee and performing the service of

supplying pots to the temples. The foregoing entries are consistent with the entries found in the Inam Register.

8. Next we come to the title deed Exhibit B-1, which was issued by the Inam Commissioner. It reads as follows :

No 1316.

Title Deed Granted to Karuppayi--.

1. On behalf of the Governor in Council of Madras, I acknowledge your title to a devadayam or pagoda service inam situated in the village of

Tellakolam in the Taluk of Madura in the District of Madura claimed to be of acres...of dry land, and acres (Two) 2.97 of wet land and held for

the support of service of supplying pots to the pagoda of Kallalagar in that village in the Melur Taluq.

(2) This Inam is confirmed to you and your successors tax free; to be held without interference so long as the conditions of the grant are duly

fulfilled.

(Sd.) _____

Dated Coimbatore, Inam Commissioner." 2nd October, 1863.

9. Taking the three documents Exhibits B-1 to B-9 together, our conclusion is that what was granted consisted of both melwaram and kudiwaram,

that is the land itself. Considering a similar extract from the Inam Register the Supreme Court in C. Periaswami Goundan and Others Vs.

Sundaresa Iyer and Others, . held that the grant consisted of both the warams. The mere fact that certain amount is mentioned as assessment in the

Inam Register does not necessarily mean that the grant was of melwaram only. The Supreme Court had to consider the effect of such an entry in

Buddu Satyanarayana and Others Vs. Konduru Venkatapayya and Others, . It is pointed out that where the question is whether the inam

comprised the land itself or only of the melwaram interest in the properties, it cannot be inferred that the inam grant comprised only of melwaram

from the fact that under column 7 in the Inam Register only the amount of assessment is set out. The Court below, as already pointed out came to the conclusion that the grant was only of melwaram, placing reliance upon the assertions made by the persons in possession in certain documents executed by them. We have already pointed out that the claim is not put forward on the basis that the persons in possession had acquired title by adverse possession. The Court below has referred to certain documents like receipts issued by Periathambi Velar as if what was paid was melwaram describing the person who paid the amount as kudiwaramdar. Such admission has also been taken into consideration in coming to the conclusion that the grant was only of melwaram. The Counsel appearing for the claimants in possession frankly conceded that such admission would not confer right of kudiwaram on the persons in possession, if we hold on a construction of the recitals in Exhibits B-1 to B-3 that the grant was of both warams. In these circumstances, we do not consider it necessary to refer to such documents containing the so-called admissions in detail. It is not the case of those who claim kudiwaram right that the service-holder conveyed the kudiwaram right alone in favour of their ancestors. It is likely that the lands were leased out by the service-holder and were allowed to be in the possession of the same family from generation to generation. But such continuous enjoyment by itself would not entitle those in possession to claim kudiwaram right. While collecting the rent, the inamdar mistakenly described himself as melwaramdar and described the person who paid the rent as kudiwaramdar. Such a description does not create title in favour of the persons in possession.

10. Claimants 1 and 2, who conceded that the subject of grant was both melwaram and kudiwaram, claimed the entire compensation for both melwaram-and kudiwaram as alienees from the service-holder. Claimants 1 and 2 claimed to have purchased each a half share from Periathambi Velar in the year 1951 not only the melwaram right but also the kudiwaram right. It is on this basis that they claimed the entire compensation. The Devasthanam contended before the Court below that the alienations on which claimants 1 and 2 based their title were void and did not convey any title, as the grantee had no right of alienation. The Court below failed to advert to this aspect. It is rightly contended on behalf of the Devasthanam

before us that the inam being a service inam, the holder for the time being is incompetent to alienate it. That a personal service inam is inalienable is well settled. In *Anjaneyalu v. Venugopal Rice Mills* 43 M.L.J. 477 : ILR 45 Mad. 620 : AIR 1922 Mad. 197. it was held that a personal inam for public service is not a property that is liable to attachment u/s 60, Civil Procedure Code. It is pointed out that where the land is personal inam for public service, Section 6 (h) of the Transfer of Property Act prohibits transfer of such property as it is opposed to public policy and the transfer cannot convey any title. In *Ramakrishna Amma v. Venkata Subbiah* 68 M.L.J. 46 : ILR 58 Mad. 389 : 40 L.W. 918 : AIR 1935 Mad. 252. it was held that the land burdened with the performance on a service of a public nature is inalienable being opposed to public policy and that Deshabandham inams being burdened with a service of a public nature are inalienable and cannot be sold in execution of a decree against the inamdar. In *Angadi Masumayya Vs. The Official Receiver*, the question arose whether, on the adjudication of a holder of certain inam as an insolvent, the inam land would vest in the Official Receiver. The question was answered in the negative holding that such land not only could not be alienated but could not be transferred from the holder to the Official Receiver. In *V.E. Ramanathan Chettiar Vs. Kalidasa Kavandan and Another*, it was held that the mortgage of a temple service inam is opposed to public policy and is, therefore, invalid. The Counsel appearing for claimants 1 and 2, namely, appellants in A. S. Nos. 529 and 848 of 1967, did not bring to our notice any authority to hold that the alienations under which those appellants claim title are valid.

11. It was contended on behalf of those in possession that they would be entitled to ryotwari pattas under the provisions of the Minor Inams Abolition Act, 1963, and that if such a patta is obtained, the holder of the patta would be entitled to the entire compensation. We do not accept this contention. No doubt, under the Minor Inams Abolition Act, persons satisfying certain conditions with regard to kudiwaram in an inam are entitled to ryotwari patta. Under that Act. minor inams are abolished and all the lands in such inams have vested in the Government. But in this case, notwithstanding such vesting, the Government have invoked the provisions of the Land Acquisition Act on the basis that the lands do not

belong to the Government but belong to others. Therefore, the provisions of that Act should be applied in ascertaining the interests of the persons

entitled to the compensation. We may also point out that the question of obtaining patta in recognition of kudiwaram right does not arise in view of

our finding that the inam was of both warams.

12. Though the inam was granted for the performance of the service in the temples, that grant was not in favour of the Devasthanam. It was a

personal grant for the performance of service in the temples and was not in favour of the Devasthanam. But the Devasthanam is entitled to see that

the compensation amount is invested in such a way that adequate return is obtained for payment to the person doing the service so long as the

service is continued to be performed. To that limited extent, the Devasthanam is succeed, even though it is not entitled to claim the compensation

for itself.

13. In the result, A. S. Nos. 589 and 848 of 1967 are dismissed. A. S. No. 8 of 1968 is allowed holding that the entire compensation amount

should be invested by the Court below u/s 32 (1), of the Land Acquisition Act, 1894. The Executive Officer of the Devasthanam is given liberty to

move the Court below to invest the amount in a suitable way. The parties will bear their respective costs in all the appeals.