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**(2002) 06 MAD CK 0193**

**In the Madras High Court**

**Case No :** S.A. No's. 2056 and 2057 of 2000 and 138, 139, 147, 148, 216, 217, 1777 and 1778 of 2001

M. Liaquat Ali, Proprietor, M.C. Packaging, Pudukkottai

APPELLANT

Vs

Sri Brahadambal Temple, Thirugokarnam

RESPONDENT

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**Date of Decision :** 27-06-2002

**Acts Referred:**

Madras Hindu Religious Endowments Act, 1926 — Section 44(2), 44B, 44B(1), 44B(2)  
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 41

**Citation :** (2002) 3 MLJ 296

**Hon'ble Judges :** K. Govindarajan, J

**Bench :** Single Bench

**Advocate :** T.R.Mani, for T.M.Hariharan, for the Appellant; P.Gopalan, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

K. Govindarajan, J.—The unsuccessful defendants in the suits have filed these Second Appeals having aggrieved by the judgments and decrees of the courts below.

2. The respondent/plaintiff-temple filed the suits for declaration to declare that the suit properties belonging to the plaintiff-temple and for recovery of possession from the defendants-appellants.

3. It is the case of the plaintiff that the suit properties are "Maniyam" lands, granted for enjoyment for emolument and remuneration for the services rendered. Referring to the patta given to the service holders, it is stated that the same was given with the condition to render service. Since the service holders were not able to render services, and the services also were no longer necessary, their services were duly terminated. Consequently, resumption and possession of the respective suit properties had been reverted to the plaintiff-temple. Subsequently, the appellants/defendants claimed to have purchased the suit properties from the service holders. They were making arrangements to form lay-

outs by trespassing into the suit properties. Hence the plaintiff-temple filed the suits.

4. The defendants contested the suits contending inter alia, by filing separate written statement in the respective suit stating that the plaintiff has no locus-standi to maintain the suits as the plaintiff is not having any title or interest in the respective suit properties, that they are ready and willing to perform the services, that the temple unilaterally dispensed with the services and so they cannot blame the service holders for not rendering services and that since ryotwari patta has been issued to the service holders and so long as the services are rendered, nobody can interfere with their possession and enjoyment of the respective suit properties. Referring to Sec.21 of the Act 30 of 1963, hereinafter called "the Act", it is stated that civil court has no jurisdiction to deal with the issue in question. It is also specifically stated that since the plaintiff had dispensed with the services as no longer necessary, they cannot also resort to the remedy contemplated u/s 21(7) (b) of the Act to disturb the defendants' possession.

5. The trial court held that the plaintiff-temple is not having any title to the suit properties, and so they cannot claim any possession on that basis. It is further held that the plaintiff can invoke Section 21(7) of the Act for enforcing their right mentioned therein. The trial court had rejected the defence regarding non-joinder of necessary parties, on the ground that the service holders need not be impleaded in the present suits as the suits are filed only to recover possession from the defendants. It is ultimately held that the plaintiff can approach "the officer authorised" for the purpose of invoking Sec.21 of the Act and till then the defendants should not alter the respective suit properties by putting up any construction.

6. The plaintiff-temple filed Appeals, and the defendants filed Cross Objections aggrieved against the direction given by the trial court.

7. The lower appellate court accepting the case of the plaintiff-temple in toto, set aside the judgment and decree of the trial court and decreed the suits as prayed for. Hence these Second Appeals.

8. The substantial questions of law that were formulated are:-

(1) When admittedly the lands are service manyam lands held by the service holders and the grant was not in favour of the temple, whether the suit for declaration of title and for recovery of possession filed by the temple is maintainable?

(2) Whether the suit as framed is maintainable and whether the civil court has jurisdiction to entertain the suit in view of Section 21(7) of Tamil Nadu Act 30 of 1963?

(3) Whether the lower appellate court is right in granting the consequential relief of recovery of possession when the main relief of declaration of title was not

granted?

9. Learned Senior Counsel appearing for the appellants submitted that the respective land was given as service maniyam to the service holders before the Act, and after the Act, namely, the Act 30/1963, ryotwari patta was given only to the appellants/defendants and the plaintiff has not established any right to be in possession of the respective suit properties. According to him, they cannot claim possession even if the property is sold. He further submitted that since the plaintiff-temple itself had terminated the service as it was not necessary, the condition mentioned in the patta ceases to exist and so it cannot be said that the service holders were not rendering the services, and thereby the temple is entitled to resume the possession.

10. Learned counsel for the respondents submitted that in view of Sec.41 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, any sale of any inam granted for the support or maintenance of a religious institution or for the services connected therewith, shall be null and void. On that basis, the learned counsel submitted that since the sale is void, the plaintiff-temple is entitled to recover possession of the respective suit properties. He also submitted that the service holders cannot claim any right in the land as owners and so, they cannot sell the land, and the defendants cannot get any title to the said land.

11. It is not in dispute that the lands in question were given as service maniyam to the service holders, the vendors of the respective defendants, and after the Act came into force, ryotwari pattas were issued in their favour under Sections 8(2)(ii) and (v) read with Section 21 of the Act, but with the condition that the services to the temple should be continued. So, from the said patta, it is clear that the vendors of the defendants have to comply with the condition, namely, they have to render such services for which such maniyam was given to them. After granting such ryotwari patta in 1972, under Exs.B2 to B5, dated 23.11.83, the Executive Officer of the plaintiff-temple passed the order dispensing with the services of the service holders, stating that such services are not important and it has to be dispensed with. Subsequently the respective suit properties were sold to the defendants by the service holders under Exs.B9 to B18.

12. Inam is a word of "arabic" origin which means reward or favour. Originally, Hindu sovereigns made grants of lands or revenue to individuals, particular families, or communities for various purposes or to religious institutions. These were otherwise called "Manyams". The same was followed by Muhammadan Rulers and later, by East India Company also. It was discontinued in the earlier years of the 19th century. Thereafter gifts of land were granted only in special cases.

13. Inams are two kinds.

(1) Proprietary right in the soil and the right to the Government share of the revenue derivable from the land were given to the same person.

(2) Proprietary or occupancy right is vested in one or more individuals, while the Government share of the revenue had been granted to another person.

14. An inam holding may be a field only, or a village or number of villages. Grants consisting of a village while village or more than one village are called major inams. If it is less than a village, it is called minor inams.

15. Even according to the plaintiff-temple, as stated in the plaint, the inams in favour of service-holders were personal though such inam burdened with service. A personal inam burdened with service is for the individual to whom it is granted though the individual is required to perform such service to the temple also.

16. While considering whether a personal inam burdened with service could come within the scope of Sec.44 B(1) of Madras Hindu Religious Endowments Act (Act 2 of 1927) (which is corresponding to Sec.41 of Tamil Nadu Act 22 of 1959) the Apex Court in P.V. Bheemsena Rao Vs. Sirigiri Pedda Yella Reddi and Others, has held as follows:-

"(4). The question for consideration is whether a personal inam burdened with service to a temple can be said to come within the meaning of the words "any inam granted for the performance of a service connected with a temple". It is urged that the words used in S.44-B(1) are of very wide import and any personal grant of land howsoever small, would be within the meaning of these words and would therefore come within the terms of S.44-B(1). The High Court has repelled this wide construction of the words used in S.44-B(1), and we think, rightly. The distinction between a grant for an office to be remunerated by the use of land and a grant of land burdened with service is well known in Hindu law. The former is a case of a service grant and is resumable when the service is not performed. The latter is not a service grant as such but a grant in favour of a person though burdened with service and its resumption will depend upon whether the circumstances in which the grant was made establish a condition that it was resumable if the service was not performed: (see AIR 1931 157 (Privy Council) ). The question therefore is whether S.44-B covers only the first type of grant, (namely, a service grant) and not a personal grant burdened with service.

(5) Prior to the introduction of S.44-B in the Act, the enforcement of a condition of a grant in favour of charitable and religious institutions in Madras was by taking recourse to Board's Standing Order 54. Under para 1 of this Order, a duty was laid on the revenue officers to see that inams confirmed by the Inam Commissioner for the benefit of or for services to be rendered to any religious and charitable institution are not enjoyed without, the terms of the grant being fulfilled. Under para 2 thereof, religious and charitable inams were liable to be resumed on the ground that the whole or a portion of the land had been alienated or lost to the institution or service to which it once belonged or that the terms of the grant were not observed. Provision was also made in the Order for the authorities which would exercise the power to resume. Further provisions in that Order show that the intention normally was not to dispossess the inamdar

even in the event of failure to perform the conditions of the grant but the land was subjected to full assessment and the assessment was made available to the institution in lieu of the service lost. In the case of personal inams burdened with service in particular what was usually resumed in the event of non-performance of service with or without alienation was that portion of the grant which represented the value of the service burdened and not that which was personal and there was no injustice in this course for as we have already said a personal inam burdened with service was granted to an individual for himself though he was required to perform certain services to the temple. Therefore, in case he failed to do so there might be resumption of such portion of the inam as would represent the burden of the service leaving the rest to him.

(6) It is in this background that we have to examine S.44-B(1) introduced in the Act in 1934 and see whether personal inams burdened with service are included within its ambit. It may be mentioned that on the introduction of S.44-B(1) in the Act, B.S.O. 54 was amended and religious and charitable inams which were all governed till then by it were divided into two classes, namely-

(a) inams granted for the performance of a charity or service connected with a Hindu math or temple; and

(b) inams not falling under class (a).

(7) Inams falling under class (a) were to be governed by the provisions of the Act while inams falling under class (b) were to be governed by B.S.O. 54 as heretofore. This amendment would also show that all religious inams, i.e., inams which had some connection howsoever slight with a temple or other religious institution were not to be governed by S.44-B and only those inams which were granted for the performance of a charity or service connected with a Hindu math or temple were to be dealt with under S.44-B while others would still be governed by B.S.O. 54. We therefore agree with the High Court that this history affords a clue to the interpretation of S.44-B (1) and suggests that though the words used in S.44-B are open to a wide interpretation, the intention was to bring within its purview only those inams which were granted for the performance of a charity or service connected with a math or temple, i.e., service inams or such inams the whole income of which was for charity and not those inams which were personal inams though burdened with some service to a temple or math. As we have already said the land granted under a personal inam burdened with service may be very large and the service expected may be very slight, and it could not be the intention of the legislature when it enacted S.44-B(1) that large personal inams with slight service attached to them should be resumed and re-granted to the temple under S.44-B(1) for failure to perform the service with which the grant was burdened. It would make no difference to the validity of this argument even if the service attached absorbed a larger portion of the inam leaving only a smaller portion to the grantee.

(8) This conclusion is in our opinion forced if we look at cl.(iii) of S.44-B(2)(a)

which permits resumption of an inam on the ground that either the math or temple has ceased to exist or the service in question has in any way become impossible of performance. Now it could not be the intention of the legislature, where an inam was granted as a personal inam though burdened with some service to a temple or math, that such inam should be resumed simply because the math or temple has ceased to exist or for some other reason the service has become impossible of performance. The nature of a personal inam burdened with service is that it is meant for the individual to whom it is granted though the individual is required to perform some service to the temple also. The legislature could not have intended when it enacted S.44(2)(a)(iii) that even such an inam should be resumed when the math or temple ceases to exist. But this would be the result if the wide interpretation contended for by the appellants is accepted. In such a case obviously the personal promotion of the grant has to be separated from the service portion and if the service is not performed it is only the service portion that is liable to resumption. Further if we look at S.44-B(2)(f)(i), it provides that where an inam is resumed under S.44-B(1) it shall be re-granted as an endowment to the temple or math concerned. In case of a personal inam burdened with service it will mean that if the service is not performed the whole inam would be liable to resumption and would be re-granted to the temple, though the inam was granted to an individual and the service with which it was burdened might have been slight, the remaining income of the inam being intended as a personal grant to the individual. Therefore when S.44-B(2)(f)(i) provides for re-grant of the resumed inam to the temple it presumes that the whole of the inam resumed was meant for service of the temple and there was no element of personal grant in it. It is on that basis what we can understand the re-grant of the resumed inam to the temple the idea behind the word "re-grant" being that originally also it was granted for the temple though as a service inam. Similarly, S.44-B(2)(f)(ii) provides that where the math or temple has ceased to exist and an inam is resumed on that ground it shall be re-granted as an endowment to the Board for appropriation to such religious, educational or charitable purposes not inconsistent with the objects of such math or temple, as the Board may direct. Here again it seems to us that the legislature could not have intended that a personal inam granted to an individual though burdened with service should be resumed when the temple has ceased to exist and the service could not be performed and should be taken over by the Board as an endowment for such purposes as the Board may direct. Such a provision would completely overlook the personal part of a personal inam burdened with service. Therefore, the view taken by the High Court that S.44-B(1), though on a wide interpretation it might also include personal inams burdened with service, is really confined to inams directly granted to the temple or service inams for the purpose of a temple or math or inams the whole of the income of which is meant for charity and does not include personal inams burdened with service, is correct. Such inams would continue to be dealt with under B.S.O. 54, class (b) as introduced by the amendment to that Order. In this view, there is no force in this appeal and it is hereby dismissed with costs."

17. Though the learned counsel for the respondent-temple to sustain the judgment of the lower appellate court has submitted that in view of Sec.41 of the Tamil Nadu Act 22 of 1959, the sale in favour of the defendants are null and void, the said submission cannot be sustained in view of the above judgment of the Apex Court, as Sec.41 of the Act 22 of 1959 has no control over the personal inams though burdened with service.

18. The lower appellate court had accepted the case of the plaintiff that it has proved the title on the basis that the title of the temple is not denied by the service holders, and so the purchasers from them cannot deny the title to the suit properties. I am not able to understand the reasonings given by the lower appellate court. When the service holders have not been impleaded as parties in the suits, how the lower appellate court has come to such conclusion that they have not denied the title of the plaintiff-temple especially when the plaintiff-temple did not produce any evidence like Inam Register etc., to the effect that the grant was to the temple as to claim any title in the land. Moreover, patta was not granted to the temple as it had no anterior title to the properties. So such finding on the basis of the above reasonings cannot also be sustained. Moreover the plaintiff-temple cannot ask such relief without impleading the service holders through whom the appellants-defendants are claiming right in the suit properties.

19. It has to be decided whether the temple could recover possession from the defendants as prayed for even though the plaintiff has not established the title to the suit property. Such prayer is sought for on two grounds, viz.,

(1) since the services of the service holders were no longer required to the temple and so they are entitled to recover possession of the suit property by themselves;

(2) the plaintiff had also resumed possession after termination of the services of the service holders and thereafter the defendants trespassed into the suit land.

20. Even to decide the above issue the service holders are necessary parties as their rights are being decided. It is the specific case of the plaintiff-temple that services were determined and consequently resumption and possession of the suit lands reverted to the plaintiff. The abovesaid case of the plaintiff cannot be sustained as the plaintiff has no right to take possession even assuming that the service holders have not performed the services which had been burdened with the patta. The remedy is under Sec.21(7) of the Act.

21. It is beneficial to extract Sec.21(7) of the Act which reads as follows:-

"21(7)(a). For so long as the service-holder renders the service, he shall be entitled to occupy permanently the lands in respect of which he is entitled to a patta u/s 8, subject, however, to the payment of the assessment fixed (under section 16 or u/s 16-A as the case may be) in respect of such lands.

(b) If the service-holder fails to render the service, the prescribed officer shall, after such inquiry and after such notice to the service-holder as may be

prescribed in this behalf, notify such failure in such manner as may be prescribed. He shall then declare that the service-holder's right to occupy permanently the land under clause (a) shall cease and determine, and the institution shall be at liberty to make such arrangement as it thinks fit for performance of the service and shall be entitled to hold the land as its absolute property subject, however, to the payment of the assessment fixed therefore (under section 16 or u/s 16-A as the case may be)".

22. From the above, it is clear that so long as the service holders were rendering services, they are entitled to occupy permanently the lands in respect of which they are entitled to patta under Sec.8 of the Act. If they fail to render service, "the prescribed officer" has to notify such failure and thereafter he has to declare that service holders' right to occupy the lands shall cease, and determined. After such determination, the institution shall be at liberty to make such arrangements as it thinks fit for the performance of the service and shall be entitled to hold the lands as specified and as absolute property, subject to the payment of assessment. Without resorting to this procedure, the plaintiff cannot come forward with the plea that they have determined the services and so they took possession thereafter by themselves, for which the plaintiff has no right under the provisions of the Act. Even if the services are not being rendered by the service holders, remedy is not before the civil court but only before "the prescribed officer" under the abovesaid provision. So the trial court is correct in holding that it has no jurisdiction. But unfortunately, the lower appellate court has not appreciated the provisions properly while reversing the judgment of the trial court in this regard. So the Lower Appellate Court is not correct in holding that civil court has jurisdiction to try the suit, even the service holders did not continue their service.

23. Moreover, the case of the plaintiff that they took possession of the property cannot be accepted as they have no right to take possession under the guise of determination of services. The said case of the plaintiff has to be rejected. Since they could not determine and take possession, the case that the defendants had trespassed into the suit property also cannot be accepted. On that basis the relief sought for, for recovery of possession cannot be countenanced.

24. Until the service holders are performing their services, their possession cannot be disturbed. While considering the similar issue regarding right to resume, the learned Judge of this Court in *Sri Mahant Prayag Doss Jeevaru Vs. Abhupillai and Others*, has held as follows:-

"When lands are thus granted as sagubadi inams, it seems to me that the lands are granted burdened with the sagubadi service. If the inamdar to whom such a grant has been made should fail to perform that service when the service was performable, it would be open to the zamindar to resume the inam but if as the District Judge finds -

"the services have long ceased to be performed for the simple reason that there

is little or no cultivable land yet remaining to be cultivated and the terms of the grant have not been violated"

then it seems to me that the zamindar is not entitled to resume these inams. As remarked by the Privy Council in the case reported as *Forbes v. Meer Mahomed Tuquee* (1871) 18 M.I. A 428=14 W.R. 28=2 Sar 588 (P.C.) the inamdars would still be bound to render the services should by any chance occasion and necessity for the rendering of the same should arise in future, and on failure to perform the duties the inams could be resumed. The case before the Privy Council was one where a grant of land was made for keeping up of a body of men to repel the excursions of wild elephants. Their Lordships held:

"If the operation of any natural cause as, for example, the practice of cultivation which has caused the wild elephants to clear out of the land removes the necessity for the services, the grantee will hold the lands practically freed from the condition originally imposed upon him; Their Lordships are therefore of opinion that upon the true construction of these sanads, the grantee though bound to protect the pergannah from the excursions of wild elephants, so long as those incursions last, and though still bound to do so should by any chance these incursions be renewed, and though they may be liable to forfeit the tenure, if they wilfully failed in the performance of these duties, are not liable to have their lands resumed because there is no longer any occasion for the performance of this particular service, there being no fear of the depredations of elephants in those places."

As their Lordships remarked at p.466 "It emphatically lay upon the appellant, who is seeking to dispossess or to rack-rent, the respondents, who by themselves, or their ancestors have brought these lands into cultivation, and enjoyed them for so long a period who must have been permitted by former zamindars to continue undisturbed in such enjoyment long after the incursion of wild elephants had become a mere matter of tradition to make out a clear title to resumption."

Both the lower Courts have held that the plaintiff has not made out his title to resume and levy full ayan thira, and I am not satisfied that they were wrong."

25. In the present case, it cannot be said that the service holders are not willing to perform the services. The plaintiff-temple alone suo motu determined the services on the basis that such services are not required to the temple.

26. The Privy Council in *Sri Raja Venkatata Narasimha Appa Rao Bahadur v. Sri Raja Sobhanadri Appa Rao Bahadur* (1906) 29 Mad. 52=16 M.L.J. 1 (P.C.) has also held as follows:-

"The question remains whether the Zamindar can dispense with the services and resume the land and upon this point the court below differed. The Subordinate Judge held that "in the absence of any evidence . . . as to an absolute grant, or as to a gift burdened only with a condition of service, the only conclusion that

can be come to upon the evidence in the case is that the village was granted by the Zamindar before 1780 to an ancestor of the (Mokhasadar defendants),for the purpose of "rendering the services abovementioned" and he found upon a specific issue that the grant was in lieu of wages.

The learned Judges of the High Court came to an opposite conclusion upon the facts. "in the first place," they say I.L.R., 26 M. 403 at p.408: - Ed. "no office by any particular designation was conferred upon the original grantee, but an obligation of a feudal character was imposed upon him. He was simply to provide a specified number of men as custodians, so to speak, of the Zamindar's property and their services appear to have been rendered intermittently and not continuously. Besides they were paid in money when they actually performed such services . . . that is to say, batta was given to them when actually on duty. It is also certain that in later years their services were not in frequent requisition, because,as Mr.Taylor points out in his report,the Zamindar would have had to pay in the shape of batta more than the services were worth. In the second place, the following circumstances indicated as plainly as possible a fixity of tenure. The Mokhasadars have paid a uniform rent of Rs.144 a year for the last 120 years without alteration at any time, and the land has descended from father to son hereditarily. There has been no instance of resumption or even an attempt at resumption during all this time. There has also been no attempt to enhance or to alter the rent, or to interfere with the devolution of the property from heir to heir.

Without altogether adopting the further reasons adduced by the learned Judges in support of their view, their Lordships are of opinion that the considerations above stated are sufficient to establish that the grant in this case was a grant subject to a burden of service,and was not a mere grant in lieu of wages. This disposes of the case,for it is well settled that where lands are held upon such grant,"as long as the holders of those grants were willing and able to perform the services,the Zamindar has no right to put an end to the tenure whether the services are required or not" (Raja Leelanund Singh v. Thakoor Munoorunjun Singh, ILR I.A. Sup. Vol. 181 At p.185."

27. From the above said decisions, it is clear that if services which had been burdened with are not required, the grantee can hold the land practically freed from the condition originally imposed upon him. In the present case, it is not in dispute that the services had been determined in view of economic depression of the plaintiff-temple and such services were not required to the temple. So, the plaintiff-temple cannot even resort to the procedure contemplated under Sec.21(7)(b) of the Act as the said provision can be invoked to determine the right of the service holders and to take possession only if the service holders failed to render services on their own fault, as these lands were granted to the inamdar burdened with particular service and those services are not required by the temple and so there has been no violation of the terms of the patta or any default on their part in the rendering of services.

28. Learned counsel for the respondents submitted that the service holders

cannot claim any ownership and so the defendants cannot claim any right on the basis of the purchase of the properties from the service holders. In support of his submission, the learned counsel relied on the decision in *M. Muthurama Mudaliar v. Sri Madhyarjuneswaraswami Temple* 1986 II MLJ 24 and in *Muthu Bhattar v. Authorised Officer, Land Reforms, Madurai* 92 L.W.212. I am not inclined to deal with the said issue in these Second Appeals for more than one reason. First of all, whether the service holders are owners of the respective properties or not, cannot be decided in their absence. Even assuming that they are not the owners, and they have no right to sell the properties and thereby defendants cannot get any title to the properties, the plaintiff-temple has no right to take possession of the lands for the reasons stated above.

29. Moreover, the above said decisions relied on by the learned counsel for the respondents have no application to the facts of the case. In 92 L.W. 212 (supra) the inam holder himself has come forward with the specific plea that "even though patta has been granted in the name of the petitioner, he has not paid the compensation specified so as to enable him to become the absolute owner of the land.". I am not able to get further facts as to the nature of grant in favour of the service holders. So, the said decision cannot be relied on to decide the issue raised in this case.

30. Even 1986 II MLJ 24 (supra) cannot be of any assistance to the learned counsel for the respondents to sustain his submission. In the said decision, the grants were given in favour of the temple and the temple has permitted the defendant therein to do service and to enjoy the property. On that basis, the learned Judge has come to the conclusion that the possession and enjoyment of the suit property by the defendants is only permissive possession. But, in the present case the facts are different.

31. For all the reasons stated above, the judgments and decrees of the courts below cannot be sustained. Hence they are set aside. Consequently, these Second Appeals are allowed. No costs. C.M.P.Nos.1473, 1474, 1545, 1546, 2332, 2333, 18727 and 18728 of 2001 are closed.