

(1957) 03 MAD CK 0025

In the Madras High Court

Case No : Special Tribunal Appeals No's. 15 to 18, etc., of 1953 and 11, 12, etc. of 1954

Madurai Sri Meenakshi Sundareswarab Devasthanams and
Another

APPELLANT

Vs

C.M.S. Shanmugasun Dara Bhattar and Others

RESPONDENT

Date of Decision : 06-03-1957

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 2(12), 3, 3(2), 38, 38A

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 — Section 20, 29, 35, 6(14)

Citation : (1957) ILR (Mad) 974

Hon'ble Judges : Rajagopalan, J;Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : K. Kuttikrishna Menon and V. Balakrishna Eradi, for the Appellant; R. Gopalaswami Iyengar. R. Aravamulha Ayyangar, M. Natesan, N. Natesan, T.K. Subramania Pillai, R. Pitchai and T.R. Mani, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—In each of these cases the village which was admittedly an inam estate, was taken over by the Government under the provisions of the Abolition Act (Madras Act XXVI of 1948). An advance compensation for each such estate was deposited with the Tribunal. It was common ground that in each case the grant of the inam was to provide for the performance of specified services in the Sri Meenakshi Sundareswarar temple, Madurai, in one set of cases, and in the Kallalagar temple, in the other set of cases. The concerned devasthanam claimed in each case that the entire amount of the advance compensation should be paid to it. The service-holders, who are the Respondents before us, on the other hand, claimed that the amounts were payable to them as they alone were the principal landholders of the respective estates within the meaning of Section 2(12) of Act XXVI of 1948. That the service-holders were in exclusive possession

of their respective estates till they vested in the Government on the notified dates u/s 3 of the "Act was not in dispute. The Tribunal by a majority upheld the claim of the service-holders and dismissed the claims preferred by the devasthanam u/s 42 of the Act. Against these dismissals the devasthanams appealed. Though in the case of each of these estates the claims preferred by the service-holders, also u/s 42 of the Act, were disposed of along with the applications preferred by the devasthanams, no separate appeals were preferred against the orders in the corresponding original petitions filed by the service-holders, which the Tribunal allowed. We set out below some of the details with reference to each of these appeals.

* * *

2. Since the questions that arise for determination in these appeals are identical, we can dispose of the appeals by a common judgment. Before the Tribunal the claims preferred by the devasthanams and by the service-holders with reference to each inam estate were disposed of by a separate order, but on reasoning and conclusions couched virtually in identical language in all these orders.

3. Admittedly each of the villages had been granted in inam, and that grant was subsequently confirmed by the British. The determination of the questions who was the grantee of the inam, and what were the terms of the grant, has to furnish the basis for the decision of the question, who held the estate immediately before it vested in the Government. The original deeds of grants themselves were not available. But extracts from the inam fair register were filed, and in some cases, where they are available, title deeds issued by the Inam Commissioner were also filed.

4. That the grant in each case was for the performance of the service specified in the temple in question was never in dispute. In the case of none of the estates did the devasthanam claim either before the Tribunal or even in the memorandum of appeal that the original grant had been to the devasthanam itself. The alternatives to be considered, therefore, were, was it a service inam in the sense that the inam constituted the emoluments of the office, or was it a personal grant with an obligation to render the specified services ?

5. That these were the three categories into which the devadaya grants normally fell was restated by Satyanarayana Rao J., in *Narayana v. Lakshmaiya* ILR (1953) Mad; 1166, at page 1168:

As pointed out by Venkatasubba Rao J., in *Sami Ayyangar and Others Vs. Venkatramana Ayyangar and Another*, grants of this description may be of three classes.

6. The grant may be to an institution, such as a temple or a mutt, the grant may be to an office to serve as emoluments attached to that office, or the grant may be one burdened with service, which cannot be resumed so long as the grantee is ready and willing to render service. In the case of grants to the institutions,

there is no difficulty because the trustees would have absolute control over such grants. In the case of grants to an office, so long as the office-holder holds the office and renders service which he is bound to render, he is entitled to enjoy the emoluments. He is treated as the servant of the temple and the trustees would have jurisdiction over him and power to dismiss him, if a proper case is made out for failure to render service, and appoint in his place another person who may be allowed to recover possession of the emoluments. In the third case, the trustees of the temple have no power or control over the inamdars as the inam is one burdened with service and the terms of the grant can be enforced only by the State which has confirmed the grant in the inam proceedings of 1860. Whether the grant in fact falls under one or the other of the categories mentioned above is a matter to be determined on a consideration of the evidence in the case, which usually consists of the Sanad, if one is available, the inam statement, Inam Fair Register extract and the title deed.

7. Who is the holder of the estate, which constituted the inam grant in each of these three classes of grant, is the question we have to consider. There may be no difficulty in answering that question, where the grant was to the temple itself. The devasthanam is the owner and the holder of the estate. Similarly, in the case of a personal grant though the grant is burdened with services, it is the grantee and after him his successor-in-interest, that is the owner and holder of the estate. In neither case would the liability to resumption of the inam grant affect the question, who is the holder of the estate. It is the inam grant that could be resumed in every case by the grantor, the State. The scope of resumption where this inam was a personal grant, burdened with services, was pointed in *Bheemasena Rao v. Peda Yella Reddi* ILR (1955) Mad. 45 to which judgment one of us was a party. At page 50 it was observed :

. . .even in the event of failure of the condition of the grant there is no intention to dispossess the inamdar from the land normally, but that the land would be subjected to full assessment and the assessment made available to the institution in lieu of the service lost. Applied to the case of a personal grant burdened with service, what would be resumed in the event of non-performance of service with or without alienation therefore would be that portion of the grant which represented the value of the service burden and not that- which was personal and therefore there was no injustice caused.

8. But that again makes no difference to the determination of the question, who was the holder of the estate when the village granted in inam constituted an estate and continued to be an estate without the grant ever being resumed.

9. On what could be resumed, the grant of a service inam to constitute emoluments of an office differs from a personal grant burdened with service. In *Bheemasena Rao v. Veda Yella Reddi* ILR (1955) Mad. 45 reference was made at page 48 to what was laid down by the Privy Council in *Shrimant Lakhamgouda v. Raosaheb Baswantrao* (1931) 61 M.L.J. 449 (P.C.).

10. The distinction to be borne in mind is between the grant of an office to be remunerated by the use of land and the grant of land burdened with service. In the former case the land will prima facie be resumable; in the later case prima facie it will not; but the terms of the grant or the circumstances in which it was made may establish a condition of the grant that it was resumable. The onus will be upon the grantor to make out such a condition.

11. As we have pointed out earlier, such differences in the extent of the liability for resumption did not have any real bearing on the question, in whom did the estate vest when the inam grant was never resumed.

12. In whom did the estate vest in the second class of grants we have described above is the next question. They could be styled service inams, in the sense that the property was attached to a specified office in the temple as emoluments of that office, or as Satyanarayana Rao J., recorded in *Narayana v. Lakshmaiya* ILR (1953) Mad. 1166.

13. The grant may be to an office to serve as emoluments attached to that office.

14. The grant in the first instance may have been to a holder of an office in a temple or the grant may have included both the office and the inam grant which was to constitute the emoluments of that office. In either case the grant was to the holder of the office, and he and his successors-it should be remembered the officers were hereditary-were entitled to hold what had been granted in inam so long as they held the office. When they held the office they also had the emoluments of the office. The inam estate which constituted the emoluments of the office was held by the holder of the office. It is true the holder of the office was liable to be removed from his office by the devasthanam. If he lost his office, he lost his rights to the emoluments of that office; where the inam estate constituted the emoluments of the office which he lost, he lost his right to hold that estate. The right to hold that estate as emoluments of the office would then vest in the new holder of the office. No more than the liability of an inam, including an inam estate, to resumption, does the liability for the removal from office affect the determination of the question, who is the holder of the estate at a given point of time.

15. The point of time we are concerned with in these cases is the date immediately before the notified date on which the inam estates vested in the Government by the operation of law, Act XXVI of 1948. Even on the assumption that all the inam grants we have to consider in these cases were grants of service inam, on the crucial date, the date immediately before the notified date, the respective Respondents in these appeals had the right to hold, and did in fact hold, the inam estates which constituted the emoluments of the office they held.

16. Though, as we pointed out the devasthanams did not claim earlier that the grants of the inam had been to the devasthanams themselves, during the arguments before us, the learned Counsel for the devasthanams-Appellants contended that, as the services had to be rendered in the temple, the devasthanams

should be viewed as the grantees of the inam which constituted emoluments of the office. The learned Counsel referred to the observations at page 52 in *Bheemasena Rao v. Peda Yella Reddi* ILR (1955) Mad. 45.

? though the original grant might be in favour of an individual service holder, it is virtually and substantially to the institution to which the service has to be rendered.

17. That statement has to be understood in the context in which it was made. The learned Judges were considering the scope of Section 44 (b) of Madras Act II of 1927, and the extent of the liability for resumption on this removal of the holder of the office from that office, and they had no occasion then to consider the question of legal ownership which results from the grant of an inam, the grant of what we have described earlier as a service inam.

18. Thus the position is whether the inam estate was a grant of service inam that is the grant to the holder of an office in a temple to serve as emoluments of that office so long as he held that office or whether it was personal grant to a temple servant burdened with an obligation to render specified services in that temple, the grantee was not the devasthanam and the devasthanam was not the holder of the inam estate; it was only the holder of the office in the case of the second class of inams, the service inams, and the successor-in-interest of the grantee under an obligation to render the services in the third class of inams in whom the inam estate vested; and it was he who was the principal landholder of that inam estate as defined by Section 2(12) of Madras Act XXVI of 1948.

19. The Tribunal did not specifically decide in every one of these cases whether the original grant "fell into class 2 or into class 3 of the three classes of inam grants to which we have referred above. Only in the case of *Sorikkampatti* (Special Tribunal Appeal No. 26 of 1954-Original Petition No. 766 of 1952) was there a categorical statement that the grant was a personal grant burdened with a service. But in every case the Tribunal recorded that the grant was to the ancestors of the temple servants who claimed the compensation amount. Apparently the Tribunal was of the view that all these inam estates were of the same class, personal grants burdened with service (class 3). In this case of *Melapanangudi*, also an inam estate, which came up for consideration at the same time before the Tribunal in Original Petition No. 1321 of 1953 (Special Tribunal Appeal No. 125 of 1954, which we are reserving for separate consideration) the Tribunal took the view that the grant fell into the second class, services inams, and that in such cases it was that devasthanam that was entitled to this compensation.

20. It may not, however, be necessary for us to record specifically, whether the inam estates in these appeals fell into class 2 or class 3 to decide the question at issue who was the principal landholder of the inam estate in question. In either case it was not the devasthanam. But it was the temple servant that was the principal landholder. That would be the position, if the only factor that

determined the question, in whom did the inam estate vest before the notified date, was, to whom was the inam estate granted as an inam.

21. Both before the Tribunal and before us the main contention of the learned Counsel for the devasthanams-Appellants was that, whoever may have been the grantee of the village, the inam estate, as an inam, since the inam estate was a religious endowment as defined by Section 6(14) of the Hindu Religious Endowments Act (Act XIX of 1951), the inam estate vested in the devasthanam concerned after Act XIX of 1951 came into force. The relevant portion of Section 6(14) of Act XIX of 1951 runs :

"religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service-holder or other employee of a religious institution.

Explanation (1).-Any inam granted to an archaka, service holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the archaka, service holder or employee but shall be deemed to be a religious endowment.

22. We are unable to see anything in Section 6(14) or in the scheme of Act XIX of 1951, as a whole to justify the contention that the temple servant was divested of whatever had legally vested in him before that Act, and that was vested in the temple, i.e., the legal title to all properties which constituted religious endowments vested in the temple by operation of Act XIX of 1951. Section 6(14) itself draws a distinction between the properties belonging to a temple and properties given or endowed for the support of the temples. It includes properties granted to a servant of the temple.

23. The properties held for conducting services in the temple might be religious endowments as defined by the Act. Religious endowments might include properties charged with an obligation to render service in a temple, properties gifted or otherwise conveyed with a burden to render services in the temple. In none of these cases is the legal ownership of the property itself transferred to the temple. If Section 6(14) of Act XIX of 1951, enlarged the previous statutory definition of religious endowments, it still left untouched the legal ownership of the property which constituted the "religious endowment".

24. The learned Counsel for the Appellants referred to Section 20 of Act XIX of 1951, which runs :

Subject to the provisions of this Act, the administration of all religious endowments shall be subject to the general superintendence and control of the Commissioner; and such superintendence and control shall include the power to

pass any orders which may be deemed necessary to ensure that such endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist.

25. The power of superintendence and control does not affect ownership of the property. It should be remembered that the temple itself is a religious endowment. Section 20 does not vest the ownership of the temple or any other religious endowment in the Commissioner. Nor can Section 20 have the effect of vesting title to all the religious endowments connected with the temple in that temple. If, as we pointed out earlier, neither liability for resumption under the terms of the grant or under any statute, nor the liability to be dismissed from service affected the determination of the question, in whom did the inam estate vest before the notified date; it is difficult to understand how the statutory provision in Section 20 of Act XIX of 1951, for supervision and control of religious endowments can have any real bearing on that question.

26. If the devasthanam was not the principal landholder of the inam estate, the next question is, was there any statutory basis on which the devasthanam could claim compensation or any portion of it. That basis must be found only in the provisions of Act XXVI of 1948. It is a complete code in itself. It extinguished all previous rights in inam estates among other estates that existed prior to the notified date-see sections 3(b) and 3(c). The Act created new rights and liabilities to take effect on and after the notified date-see Section 3(e). The relevant portion of Section 3 runs :

With effect on and from the notified date and save as other wise expressly provided in this Act :-

* * *

(b) the entire estate shall stand transferred to the Government and vest in them free of all encumbrances ?"

(c) all rights and interests created in or over the estate before the notified date by the principal or any other landholder, shall as against the Government cease and determine;

Section 3(e) runs :

the principal or any other landholder and any other person whose rights stand transferred under clause (b) or cease and determine under clause (c), shall be entitled only to compensation from the Government as provided in this Act.

27. Even if the inam estate had vested in the devasthanam before the notified date, the only statutory provision for compensation would have been that in Section 38 of Act XXVI of 1948, an annual tasdik allowance would have been payable. But we have held that the inam estate did not vest in the devasthanam before the notified date.

28. Whether it was a service inam (class 2) or a personal inam burdened with

service (class 3), the bolder of the inam estate had no absolute powers of disposition by way of alienation, etc. Apart from the nature of the grant in each case, there was also the statutory ban imposed by sections 29 and 35 of Madras Act XIX of 1951. In such cases Section 48 of Act XXVI of 1948 provides :

29. Where the power of the landholder to alienate any property in an estate is restricted, whether by the terms of the grant or other wise, the provisions of this Act relating to the payment and apportionment of compensation in respect of impartible estates shall, so far as may be and subject to such rules as may be made by the Government in this behalf, apply to the payment and apportionment of the compensation payable in respect of the estate.

30. Admittedly no rules have been framed by the Government, and so the payment of compensation in such cases is regulated by Section 45 of the Act. Section 45 provides for the payment to (i) the principal landholder, his sons, grandsons and great-grandsons (Section 45(2)(a)); (ii) persons entitled to maintenance out of the estate-Section 45(2)(b); (iii) creditors with claims against the estate-Section 45(3). The devasthanam cannot obviously claim any portion of the compensation under any of these three heads.

31. The learned Counsel for the Appellants urged that, as the devasthanam was entitled to the service, for the performance of which the inams in question were granted, the devasthanam was interested in the continuance of the service even after the inam estates vested in the Government. But then, for such a situation specified statutory provision was made in Section 38-A of the Act XXVI of 1948. Section 38-A runs :

Where an inam estate or part thereof was held immediately before the notified date by an individual on condition of rendering service to a religious institution, the individual shall, notwithstanding anything contained in this Act, be bound to render such service after the notified date, if he is required to do so by a written notice sent to him by the institution within such time as may be specified by the Government in this behalf.

(2) Any such individual who renders the service on being required to do so by the institution as aforesaid shall be entitled to be paid by the institution every year such sum as may be fixed by agreement between the individual and the institution, and if no such agreement can be reached, such sum as may be fixed by the Board constituted under the Madras Hindu Religious Endowments Act, 1926, in accordance with such rules as may be made by the Government in this behalf:

Provided that if the individual pays to the institution the amount of compensation paid to him under this Act, the institution shall, in lieu of the sum aforesaid, pay to the individual every year a sum equal to the aggregate of the amounts which would be payable by the Government u/s 38, if the inam estate or part thereof was held immediately before the notified date by a religious institution.

Explanation.-For the purposes of this section, "individual" means the person who would have held the inam estate or part there of, if it had not vested in the Government under this Act.

32. In the absence of any further provision by way of rules u/s 48, the devasthanams cannot claim any further rights than those provided in Section 38-A.

33. Section 38 provided for the first of the three classes of devadaya inams we have referred to above, the grants to the temple; Section 38-A applied to the other two classes of inams, the service inams and the personal grants burdened with service. In each case a *tasdik* allowance takes the place of the notional net income from the inam estate, which the holder of the inam estate would have been entitled to, ; had he not been divested of the estate under Act XXVI of 1948. Only, in the case of estates which belonged to the temple, the Act gave it no option; it could only claim a *tasdik* allowance u/s 38. In the case of the other holders, which as we said included holders of estates which constituted inams that fell into class 2 or class 3, the holder had this right to receive the compensation and an option to retain it or to pay it over to the temple and thereafter receive what would be the equivalent of a *tasdik* allowance from the temple. But Section 38-A made it clear that the holder of the estate was in the first instance entitled to the payment of the compensation.

33. The further claim of the learned Counsel for the Appellants was that the interest the devasthanams had was an interest in the property itself, the inam estate. The interest of the devasthanams is only in the performance of the service for which the inams were granted. We have no hesitation in rejecting the contention of the learned Counsel that that vested in the devasthanams an interest in the property itself-see also the observations in *Adinarayana Chetty v. Srirangachariar* 1940 M.W.N. 404, 410. Neither the original grant nor the confirmation of the inam grant by the British conferred any right in the property itself on the devasthanams. As the Tribunal rightly pointed out, the interest, if any, that the devasthanams could claim was not an interest that fell within the scope of Section 3(2)(c) of Act XXVI of 1948. Even if it was an interest in the property itself, it was not one created by the landholder to bring it within the scope of Section 3(2)(c). Even if the interest the devasthanams could claim in the continuance of the service could be viewed as "encumbrances " within the meaning of that expression in Section 3(2)(b) of Act XXVI of 1948, no specific provision was made for such an encumbrance except in Section 38-A of the Act. The learned Counsel for the Appellants contended that even an interest in the continuance of service was an encumbrance. It is not necessary to decide that point As we said, the only statutory provision made for safeguarding the right of the temple to have the services continued is in Section 38-A. There is certainly no provision in Section 45 either for the evaluation of that right or for the payment to the temple from out of the compensation deposited for the inam estate. The devasthanam cannot, therefore, claim the compensation or any

portion of it on the ground, that it had an interest in the continuance of the services, for the performance of which the inams had been originally granted and subsequently confirmed.

34. The next contention of the learned Counsel for the Appellants was that, even if the devasthanam was not entitled to any payment, the amount in deposit should not be paid out to the Respondents, as they were not the full owners of the inam estates that were taken over by the Government. The Respondents were the principal land holders, we have held so. They are entitled to payment out under the terms of Section 48 read with Section 45 of the Act. The restrictions on the right to dispose of the property, the inam estate, when it vested in them in no way altered their status. They were the principal landholders of the inam estate. Once again we have to point out that the statutory provision in Section 38-A is to safeguard the continuance of the services for which the inam estates were originally granted, and Section 38-A imposes statutory obligations on those who receive compensation for the notified inam estates.

35. In our opinion the Tribunal was right in negative the claims of the devasthanams. The appeals fail and are dismissed with costs.