

(1967) 04 MAD CK 0053
In the Madras High Court

M.C. Perumal Chettiar and Others

APPELLANT

Vs

The Estates Abolition Tribunal (District Judge) and Others

RESPONDENT

Date of Decision : 20-04-1967

Acts Referred:

Citation : (1968) 2 MLJ 157

Hon'ble Judges : T. Venkatadri, J

Bench : Division Bench

Judgement

T. Venkatadri, J.—Some of the ryots of Baburayampettai village in Maduranthakam Taluk, Chingleput District, have filed these petitions to quash the order dated 31st August, 1964, of the Estates Abolition Tribunal (District Judge) Chingleput, declaring that the lands, for which the respondent-Devasthanam has claimed patta, are the private lands of the Devasthanam.

2. Ever since the village of Baburayampettai was declared an Inam Estate under Madras Act XXVI of 1948, there has been regular litigation between the ryots of the Village and the Devasthanam. The Devasthanam has been contending that it possessed the Melwaram and the Kudiwaram rights in the lands and that the village was not an Inam Estate. In 1950, the Inam Settlement Officer, Chittoor, declared Baburayampettai as an Inam Estate. The said order Was confirmed in appeal by the Estates Abolition Tribunal, Madurai, holding that there was no proof that the grant was of both the warams in the Village or that the grantee possessed Kudiwaram rights of its own at the time of the grant.

3. The respondent-Devasthanam started a second set of proceedings with an application u/s 15 of the Abolition Act for the grant of ryotwari patta claiming the lands as the private lands of the Devasthanam. In that petition, the tenants including the petitioners raised an objection that they had occupancy rights in the lands and that they had been in occupation of the lands from generation to generation with proprietary rights. The temple authorises, on the other hand, asserted that they were receiving rent from the tenants, that the revenue records would show that the temple was the pattadar, and that the ryots had

executed muchilikas to the Devasthanam as Ekabogam mirasdar. The Assistant Settlement Officer granted patta to the Devasthanam holding that the lands were the private lands of the temple. The tenants filed an appeal to the Estate Abolition Tribunal, Vellore. The Tribunal was of the view that the Assistant Settlement Officer had not stated how he considered the lands to be private lands, i.e., whether the lands were private lands such as Khambattam, Khas etc. as defined in Section 3 (10) (b) (i) of the Estates Land Act or whether they fell under the other types referred to in the section. On that view, the Tribunal remanded the matter to the file of the Assistant Settlement Officer to examine, the question afresh in the light of documentary evidence.

4. When the matter went back to the Assistant Settlement Officer Chingleput, he went through the evidence adduced before him. He found that the total extent of the village was about 600 acres and 450 acres were cultivated that the temple never cultivated the lands, that the ryots cultivated the lands, that the Devasthanam had no kudi right, that the ryots constructed about 60 wells and that the Devasthanam never put up any well. He also found that the Devasthanam never paid any money after the estate was taken over by Government and that the evidence showed that the collection was made only from the ryots. In the end, he dismissed the claim of the Devasthanam for grant of ryotwari patta. The Devasthanam preferred an appeal to the Estates Abolition Tribunal, Chingleput. The Tribunal once again remitted the matter to the file of the Assistant Settlement Officer to study the history and nature of the lands in the village and then to decide whether patta should be granted to the temple on proof of possession and cultivation or whether compensation should be paid for the items of lands taken over by the State.

5. The matter thus came back to the file of the Assistant Settlement Officer, for a third time. The Assistant Settlement Officer traced the history of the village, origin of the tenure and classified the lands into four schedules. He then granted patta to the Devasthanam in respect of the lands in the D. Schedule and disallowed the claim of the temple in regard to the lands in A, B and C Schedules. The persistent Devasthanam filed an appeal to the Estates Abolition Tribunal, Chingleput, and equally the tenacious tenants also filed a counter-appeal questioning the grant of patta to the Devasthanam in respect of the lands in the D. Schedule. The Tribunal noticed that from the earliest times the lands had been treated as the private lands of the Devasthanam, that the temple had been shown as the sole pattadar that some lands had been let out on waram basis and dry lands on cash-rent basis that there was only one patta for all the lands in the Village which stood in the name of the temple and that the rent reduction notification was to the effect that there were no ryoti lands in the Village. The Tribunal also observed that the Paimash Register showed that the Devasthanam was the Ekaboga Mirasdar, that the tenants did not possess any occupancy rights as shown by their conduct and admission and that the temple was therefore entitled to succeed. The Devasthanam was granted patta for all the lands claimed by it.

6. These petitions are filed by the tenants to quash the order of the Tribunal.

7. The character of the tenure is shrouded in mystery. It is, therefore, necessary to trace the history of the village lands, the character of the tenure and the source of the respective rights of the Devasthanam and the tenants to the lands in detail. There is in the records a report dated 23rd January, 1834, filed by a trustee of Baburayampettai Devasthanam, in response to an order of the then Collector of Chingleput directing him to show how he became entitled to the office of trustee of the aforesaid Devasthanam. In that report, the history of the village is graphically described. About 300 years ago, one Krishnaji Pandit came from the northern country to the Arcot Suba, gained the favour of the then Nawab of that place and got himself appointed as his Dewan. A son was born to him. He was named Babu Rao. He was a precocious child. It is said in that report that God appeared before the child in a dream and told him that a temple should be built. One day, as he was going along a thick forest Where Wild animals live, he had a good omen, and he understood that the temple should be built in that Very place. He took steps immediately to rehabilitate the place He brought a number of people, cleared the forest, formed streets and constructed the temple in the middle. He got the idols of the Mulavar and Utsavar cast separately for Siva and Vishnu, and named the place Dakshina Chinna Kanchi. He received much assistance from the then Nawab and got the village assigned as rent-fee Shrotriem for the deity of Sri Vijayavaradarajaswami. Subsequently, the temple went into a bad state of affairs on account of the invasion by Mohammadan rulers. Thereafter, with the help of the income from the Shrotriem and supplemented by the money of the then trustee, the affairs of the temple were conducted. According to the report, the East India Company also recognised the management of the temple by the members of Krishnaji Pandit's family.

8. In the Inam Extract, these lands are decribed as Devadayam for the support of Sri Vijayavaradarajaswami, and Jodi of Shrotriem kist is mentioned as Rs. 136-8-0. The original grantee is described as Sri Vijayavaradarajaswami. The grant is stated, to be permanent so long as the Pagoda is maintained:

9. It is clear from the above account given in the report that the place was originally a thick forest infested with Wild animals. At the instance of the original founder, the villagers cleared the forest, settled in the village and brought the lands under cultivation. It is true that the original founder of the temple was mainly responsible or instrumental for bringing all the lands under cultivation. The ryots of the Village executed muchilikas in favour of the temple Devasthanam agreeing to deliver melwaram grain rent. The cultivation muchilikas executed by the ryots describe the Devasthanam as Ekabhoga Mirasdar of Sri Vijayavaradarajaswani. After the coming into force of the Estates Land Act, the ryots began to assert that they have occupancy fights in the lands. The Devasthanam was shrewd enough to take muchilikas with a term that the temple would take possession of the lands after the expiry of the lease. Nonetheless, the tenants continued in possession of the lands from generation to

generation, making improvements to the lands and constructing wells. The lands were dealt with as if they were their own lands. There Was partition of the lands between the members of the families of the ryots; mortgages were effected in times of need; gifts were made by testamentary disposition to their kith and kin, and thus the lands continued to be in their possession. Whenever there were misunderstandings and disagreements between the Devasthanam and the tenants, they resorted to litigation making a trial of their strength, the ryots asserting that they have occupancy rights and the Devasthanam asserting that the lands are the private lands of the temple. In one of the earliest litigations in the year 1917, the District Munsif held that the tenants had let in no evidence which would show that the grantee had not the kudiwaram at the time of the grant (the burden of proof was then on the tenants), and that the Village was not an estate to which the Estates Land Act would apply In spite of this litigation, the tenants continued in possession of the lands asserting their rights, till the Abolition Act came into force.

10. When the Estate was taken over by the State under the Abolition Act, once again trouble started between the Devasthanam and the ryots, the former contending that it had both the warams and the latter contending that they had occupancy rights. Though the Devasthanam attempted to get a declaration from the revenue authorities that the village was not an Inam estate, the Devasthanam failed in its attempt. The Inam Settlement Officer declared the village of Baburayampettai to be Inam estate under Madras Act XXVI of 1948, On appeal by the Devasthanam, the Estates Abolition Tribunal of Madurai, confirming the finding of the Settlement Officer, held that there was no proof that the grant was. of both the warams in the village or that the grantee (temple) possessed kudivaram rights of its own at the time of the grant. .

11. Learned Counsel for the petitioners contends that once the Tribunal gave a finding that the temple did not possess both the warams and when the temple had failed to establish that it possessed kudiwaram right at the time of the grant, it cannot be allowed to once again reopen the question namely that it has kudiwaram rights by asserting that the lands are the private lands of the Temple. To support his proposition of law, he drew my attention to Addanki Tiruvenkata Thata Desika Charyulu (Since deceased) and after him his legal representatives Vs. State of Andhra Pradesh and Another, where it was held that the determination by the Settlement Officer of the question whether the "inam village " was an inam estate was within his exclusive Jurisdiction and in regard to it the jurisdiction of the civil Courts Was clearly barred. It is true that the temple authorities cannot agitate that the lands are not in the inam estate. As far as the question whether the village is an inam estate or not, it has been finally settled by a hierarchy of authorises that it is an mam estate. But for the respondent-Devasthanam it is claimed that even in an inam estate the temple can own private lands, and that is why the Devasthanam filed an application u/s 15 of the Abolition Act. Section 15 of that Act says:

The Settlement Officer shall examine the nature and history of all lands in respect of which the landholder claims ryotwari patta under Sections 12, 13 of 14, as the case may be, and decide in respect of which lands the claim should be allowed....

The landholder may possess private land in an estate within the meaning of Section 3 (10) (b) of Estates Land Act, or stood recorded as private land in a record prepared under the provisions of Chapter XI or Chapter XII or the said Act. Therefore we cannot say that the temple has no right to file an application for grant of ryotwari patta.

12. The question that arose before the Settlement Officer was whether the temple established that it had got private lands in the Baburayanpettai village. It is, therefore, necessary to determine whether the temple has private lands in the village. Sri M. S. Venkatarama Iyer for the petitioners contends that the Devasthanam has not satisfied the tests laid down in *Periaman v. A. S. Amman Kovil* ILR (1952) Mad. 741 : (1952) M.L.J. 71 and that the petitioners have shown that they and their predecessors have been in continuous possession of the lands in the village from generation to generation from as early as 1686 It is true that they have been executing machilikas from 1890 onwards in favour of the temple, and even after the Estates Land Act came into force. But, according to learned Counsel for the petitioners, that Would not by itself determine that the petitioners have lost their occupancy rights in the lands.

13. In regard to the burden of proof of establishing the occupancy rights, formerly there Was a controversy whether it was on the tenants or on the landholder. Now the matter has been set at rest by the Judicial Committee in *Lakshmanan v. Venkateswarlu* where it is observed that Courts have to find out whether the Inamdar has proprietary interest in the land from the whole circumstances relating to the holding, such as the terms of the grant when the deed is available, long possession, the course of dealing between the Inamdar and the tenant, dealings with the land "by the tenant, and that the burden is on the landholder to make out a right to evict the tenant by proving that the grant included both the melvaram and the kudiwaram interests or that the tenants were let into possession by the Inamdar under a terminable lease and not on the tenants to prove their occupancy rights. It is also observed that the dealings with the property by the tenants by sales or mortgages, if proved, will be indicative of the existence of kudiwaram interest in them, that from the absence of such dealings no inference can be drawn in support of the claim " of the Inamdar to eject the tenants, and that in estimating the value of the stipulations and admissions made by the tenants in the written muchilikas executed by them, the Court cannot neglect the consideration that a ryot, so long as he is not evicted, might be prepared to sign anything. This principle has been followed by " their Lordships of the Supreme Court in *Sunkavilli Suranna and Others Vs. Goli Sathiraju and Others*, , where it is observed that the Zamindars were accustomed to take machilikas or other writings from their ryots admitting,

notwithstanding the true nature of rights, that their tenure was restricted and that such a covenant was, by itself, not sufficient to justify the inference that the ryots tenure was precarious. Therefore the mere execution of muchilikas by the tenants in the instant case would not, by itself establish that the landholder has got both the melwaram and kudiwaram rights" But what learned Counsel for the Devasthanam contends is that the tenure is in the nature of Mirasi tenure, that the grant was made to Sri Vijaya Varadarajaswami of both the melwaram and kudiwaram interests and that the tenants are only cultivators under the Mirasi tenure.

14. The rights of the Mirasdar in the law of tenure is one of the most complex mingled and mixed in the fights between the Mirasdar and the tenant. The meaning of Miras, as given in the Replies to Seventeen Questions proposed by the Government of Fort St. George relating to Mirasi right, is that it is a general term to designate a variety of fights, differing in nature and degree, but all more or less connected with the proprietary possession, or usufruct, of the soil, or of its produce. Manyams, lands free of tax, and mereis cess at various rates, received in kind from the general produce and other privileges of the various communities are called mints. The fight of the permanent cultivator to the hereditary usufruct of the land is called miras. So also is the right of the Sircar share of the produce of land held by special grant under the various denominations of Servamanyam, Ardhamanyam, shrotriam and so on. In Chingleput and Arcot Districts, the proprietary Mirasdars hold a certain extent of land free of all assessment and are entitled to receive cess under the various denominations from the gross produce of all taxable lands, and tunduvaram, a portion of the produce, of Swam bogam, the landlord's fight, from all land cultivated by Poyacaris, or persons not Mirasidars. They are otherwise called fixed cultivators. They may be called tenants-at-will or tenants under special agreement. The tenants hold the property not absolutely. Still they possess the power of sale of cultivable land. Mirasi inhabitants have the fight to cultivate the soil. The administrators, collectors and revenue officers hold diametrically opposite views in regard to the rights of the tenants in the Mirasi tenure.

15. In one of the earliest cases on the subject, Chinnan v. Kondam Naidu (1913) 26 M.L.J. 169, a Division Bench of this Court had to deal with the Mirasi tenure in the very same district of Chingleput, wherefrom the present case has arisen. The Bench observed that a Payakari by continued residence in the village and cultivation of the same lands for three generations acquired a permanent right of occupancy. In the same decision, Sadasiva Aiyar, J. (One of the learned Judges constituting the Division Bench) observed:

It seems to me now that a person cannot be held to own the Kudiwaram right in its true and complete sense unless he has also got the power of alienation of his right of occupancy and unless he does not acknowledge himself to be merely the tenant of a person really owning the Kudivaram right.

In the present case, several instances have been brought to my notice when

these fixed cultivators have dealt with the lands independently in their own right by way, of mortgage, gift and sale.

16. Learned Counsel for the petitioners further contends that the Inam title deed shows the nature of the grant in the village is Devadayam and the grant is to be permanent so long as the Pagoda is maintained. The word "shrotriam" would indicate that the revenue from the land would go to maintain the temple. But it would mean that there should be a grant of the land itself. To support his proposition, he cited *Seethayya v. Subramania Somayajulu* ILR (1929) Mad. 453 : 56 M.L.J. 730, where Privy Council has observed thus:

Shrotriam, according to Wilson's Glossary, means a grant of lands or a village held at favourable rate, formerly as assignment of land or revenue to a Brahmin learned in the Vedas, but latterly applied to similar assignments to native servants of Government Civil or Military, and both Hindus and Muhamadans, as a reward for past services. A Shrotriam grant gives no right over the lands and the grantee cannot interfere with the occupants as long as they pay the established rents.

It was held in that case that the grant in question was a grant of the melwaram only. It was also held on the terms of the grant that it could only mean revenue. In the present case, as I said, the purpose of the grant is stated to Devadayam, and Jodi or Sirotriam kist is given as Rs. 136-8-0. This gives me the impression that the grant consists of melwaram only. If we take the circumstances under which the Inam was granted, it is Very clear that the original founder brought these villagers or tenants to clear the forest, reclaim the land and to settle down there and cultivate the lands. These persons have been in continuous possession of the lands, though the founder of the temple got the Village assigned in favour of Sri Vijaya Varadaraja Swami. These tenants were the first tillers of the soil in the village. It is true that the founder of the temple was instrumental in bringing these tenants for the purpose of tilling the soil either before or after constructing the temple and was also instrumental in getting the lands assigned in the name of the temple. But it does not mean that the temple has got both the melwaram and kudiwaram Further the lands are situate in Chingleput district and the tenure is what is called the Mirasi tenure which is always a complicated and contested one. It has given rise to doubtful rights in the Mirasdar and the tenants as well. There is one factor, however, which has to be borne in mind that these tenants continued to live in the village from generation to generation, cultivating the soil and dealing with the lands in their own right. At no time was this objected to by the Devasthanam. At no time did the temple authorities interfere with the ryots' mode of cultivation. The Devasthanam was only concerned with executing muchilikas, getting favourable rent. But they never took effective steps to establish their kudiwaram right in the lands. No doubt the Devasthanam filed suits against the tenants, but they Were for recovery of arrears of rent and for eviction. It was more or less a trial of their strength. On those occasions, on the law as it stood then, the burden of proof was on the tenants to show that they

had kudiwaram interest. But now the law has changed, and it is the duty of the landholder to establish that he has both the melwaram and kudiwaram rights. It cannot, therefore, be said that merely because the respondent-Devasthanam has been described as Ekabogham Mirasdar in some of the Muchilikas, it possesses kudiwaram interest also. A mere recital in a document that a person was a Ekabogam mirasdar would not necessarily show that he was the owner of the entire kudiwaram in the village at the time of a shrotriam grant. The tenants under a Mirasi tenure enjoy the right of cultivating the soil by prescription, and their ancestors having done so for generations, they cannot be evicted from the lands at the will of the Mirasdar. They cannot be compelled to relinquish their lands at the command of the Mirasdar. They may have no right in the substance of the soil, but they have a right to use the soil and to cultivate it. They are only liable to pay a share of the produce from and out of the land in their possession. The tenants under a Mirasi tenure are very near in situation to tenants of an Estate, who are given the preference of cultivation. The tenants who were brought in to clear the jungle land also settled down permanently, and the tenants continued to live where their fathers and forefathers lived and died before them, by succeeding to their rights and privileges which constituted their estate of which they could not be deprived. As the tenants continued to occupy the lands uninterruptedly, they became the legal proprietors, and according to the practice of the country, they became the owners by length of occupancy, and retained possession of the land and enjoyed its produce. It would be necessary here to repeat that the founder of the temple was neither an agriculturist nor a cultivator. He only spotted the spot by divine intuition and built a temple clearing the forest. Because the temple was put up there, he colonised the place. The people who came to clear the forest reclaimed the land and settled down there and began to cultivate it. It is true that the founder got the lands assigned to the temple as Devadayam grant, and asked the tenants to pay shrotriam fees. The temple was being managed from the income from the lands. But it is not clear whether the Devasthanam, at the time of the grant, possessed any kudiwaram interest. The villagers were already inducted into the lands, at the time that grant was made. They have been in possession of the soil and actually cultivating it. They are the persons who must have the kutwaram rights in the lands. The basis of the mirasi tenure is stated to be that cultivated land is the property of the man who cuts away the wood or the first who cleared and tilled it. (see C.N. Varadappan Vs. The State of Madras and Others, . Even the founder of the temple was only obsessed with the idea of building a temple and wanted to make permanent arrangements for maintaining it. It was only with that view he got the lands assigned to the temple. It is no doubt true that the tenants did not demand patta nor exchanged patta with the temple authorities. According to learned Counsel for the Devasthanam the temple was the sole pattadar. But merely obtaining patta in the solename of the Devasthanam would not, by itself, determine the character of the tenure. The system of Mirasi tenure in Chingleput District is an obscure, obsolete and archaic one. In view of the complexity of the Mirasi; rights, in view of the doubtful rights of the Mirasadar and the tenants, in

view of the liberalised legislation conferring benefits on the occupants of the soil, and in view of the continuous and uninterrupted possession by the tenants of the land, I am of the opinion that the Mirasi tenure has to be interpreted according to the present state of affairs and according to the present day needs of the Society. In view of the above considerations, I think that the tenants do have occupancy rights in the land. I am, therefore, of the further opinion that the Government should recognise the kudiwaram rights of the tenants in the village and collect the land revenue from them and also grant mohini allowance to the Devasthanam. The reason why the tenants did not rush to revenue authorities to obtain patta might probably be due to the fact that they were asserting their occupancy rights in the proceedings initiated by the Devasthanam for grant of ryotwari patta, which purposeless and wasteful litigation lasted for nearly two decades. It is high time that Government should interfere, so as to set at rest respective rights of the Devasthanam and the tenants in Baburayampettai village.

17. For the aforesaid reasons, the writ petitions are allowed but with no costs.