
(1933) 09 MAD CK 0005
In the Madras High Court

Meeralli Ambalam and Another

APPELLANT

Vs

R. Shanmugha Rajeswara Sethupathi alias Naganatha
Sethupathi Avergal, Rajah of Ramnad and Another

RESPONDENT

Date of Decision : 11-09-1933

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(16)(a)

Citation : AIR 1934 Mad 221 : (1934) ILR (Mad) 593 : (1934) 39 LW 334 :
(1934) 66 MLJ 338

Hon'ble Judges : Vepa Ramesam, J; Venkatasubba Rao, J

Bench : Full Bench

Judgement

Venkatasubba Rao, J.—These cases raise the question as to the meaning of the expression ""tank-beds"" in Section 3(16)(a) of the Madras

Estates Land Act. The plaintiff, the Zamindar of Ramnad, alleges that the lands in question are in the bed of the tank (known as the Abhiramam

tank) and that they are therefore outside the category of ""ryoti land"" as defined by the Act. Several suits were tried as a batch, and the learned

District Munsif upheld the plaintiff's contention only in two of them. O.S. No. 836 of 1924 is one such and the District Munsif's decision was

confirmed by the Subordinate Judge in appeal. Second Appeal No. 1066 of 1931 relates to the plot in O.S. No. 836 of 1924. From what I shall

state presently, it will appear that the appellants have no case and their second appeal is accordingly dismissed with costs.

2. In regard to the other plots, the District Munsif has held that they are not in the tank-bed, and his decision has been reversed by the lower

appellate Court. The several Civil Revision Petitions before us relate to those plots.

3. In 1870 a circular was issued in the zamindari, known as the Boyle's Circular, fixing what are known as the "malnihidi" limits of the tank, and it

is strongly contended by Mr. Rajah Aiyar for the ryots that the portion so marked off must alone be taken as constituting the bed of the tank. The

lands, with which we are concerned in these Civil Revision Petitions, are outside the "malnihidi" or "mulamal" limits. The circular in question was

issued with a view to prohibit cultivation within those limits, and conditions were laid down as to how the "malnihidi" limits were to be fixed. I may

point out that in the judgments of the Lower Courts, the words "mulamal" and "malnihidi" are used indifferently to convey the same idea. According

to the defendants, a tank-bed consists of four portions: (1) Vettuthavu, (2) Mulamal or malnihidi, (3) Kulamkorvai, and (4) Eramedu. These words

are indecisive in regard to the point we have to decide and the division is arbitrary. "Vettu-thavu" merely means the deepest part and "mulamal" or

malnihidi" connotes no more than that the portion is within certain defined boundaries. By "Kulamkorvai" is meant that cultivation is carried on

upon that part and "Eramedu" is high land. The contention for the defence is, that "Kulamkorvai" cannot be regarded as tank-bed. This argument

amounts to nothing more than merely affirming that because cultivation is carried on in a particular portion, that cannot be regarded as tank-bed.

The learned District Munsif observes:

If really the whole extent within the F. T. L. is tank-bed and not cultivable and is prohibited, there is no reason why the mulamal should be

separately pointed out.

4. There is a fallacy underlying this statement. The higher portion of a tank-bed may be fit for cultivation in a manner the lower portion is not, and

the Zamindar with a view to increase his income may well permit cultivation on the land on the higher level. The learned District Munsif himself

says:

Paragraph 388 of Elli's Irrigation Manual lays down that the effective storage capacity of a tank is limited by the F.T.L. but the area submerged by

the tank water spread is dependant upon the M.W.L., which is always higher than the F.T.L.

5. Then he goes on to point out that "malnihidi" limits are lower than the F. T. L., and the only ground for his conclusion is, that because cultivation

is permitted in what is known as ""kulamkorvai"", therefore that part must be regarded as being outside the tank-bed. He does not go so far as to suggest that the ""malnihidi"" limits are conterminous with the bed of the tank. Between the ""malnihidi"" and the suit lands there is a portion where babool trees abound, and the District Munsif recognises that this part at any rate must be treated as being within the tank-bed and the reason he gives for this conclusion is, that had this been ryoti land, there would necessarily have been cultivation in that region. In either case the District Munsif applies a wrong test; merely on the ground of absence of cultivation, he is prepared to hold that a certain part is tank-bed and similarly from the fact that cultivation is carried on, he wishes to infer that the portion so cultivated is ryoti.

6. In *Thames Conservators v. Smeed, Dean & Co.* (1897) 2 Q.B. 334 the bed of a river is thus described:

The bed of the river is that portion of its soil which is alternately-covered and left bare, as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average and mean stage during the entire year, without reference to the extraordinary freshets of the winter or spring, or the extreme droughts of the summer or autumn.

7. There is, of course, a fundamental difference between a tank-bed and a river-bed, but the passage is useful to this extent, namely, that what happens in abnormal or extraordinary times must clearly be excluded. But that is not Mr. Rajah Aiyar's contention. He admits that the suit lands are submerged in normal times after rainfall every year and that cultivation has necessarily to be stopped during those periods. The lower appellate Court's conclusion that the suit lands are tank-bed must therefore be affirmed.

8. It is next urged that land, without ceasing to be tank-bed, may yet be ryoti. The definition of ""ryoti land"" excludes in terms tank-beds: Section

3(16). To quote only the material portion of the section:

"Ryoti land" means cultivable land in an estate other than private land, but does not include tank-beds.

9. A certain land is either ryoti or tank-bed and unless it ceases to possess the character of a tank-bed, it cannot be ryoti. Mr. Rajah Aiyar contends that because cultivation has been permitted, therefore the land becomes ryoti and relies upon the last clause of Section 20 of the Estates

Land Act. Whatever rights may have been conferred on the occupants (we are not deciding that point), it is impossible to hold that the land has

become ryoti under the Act. This very Bench has held in Second Appeals Nos. 1288 to 1292 of 1929 that though any specified land may be

within the ambit of a tank-bed, it may on account of abandonment cease to possess that character; but there must be acts from which the

abandonment can be inferred. The defendants themselves admit that cultivation is carried on subject to the condition that the lands are liable to be

submerged. That very statement implies that abandonment on the part of the Zamindar cannot be inferred, even granting that a landholder without

the concurrence of his ryots can convert a tank-bed into ryoti land. These lands began to be cultivated just about 25 or 30 years previous to the

filing of the suits, and the Lower Courts point out that when the zamindari was in the possession of certain lessees, some persons taking advantage

of that fact, occupied the lands and began cultivation. Subsequently it is alleged that either the lessees or the Zamindar recognised the occupants as

tenants and issued pattas. What the effect of such conduct may be is not a point that now concerns us. The order of remand made by the Lower

Court has left open that question and the suits have been directed to be tried on the other issues framed in the case. What is relevant to the present

matter is, that no abandonment has been proved. The contention that a certain land may at the same time be both tank-bed and ryoti cannot

possibly be accepted. All that Section 20 says is, that lands ""set apart for the common use of the villagers"" such as threshing-floors shall not be

assigned for any other purpose except under certain conditions. The section then goes on to provide:

Nothing in this section shall apply to the tank-beds in any estate or affect the rights of the landholder over them.

10. This reserves the right of the landholder to assign tank-beds for cultivation, but that does not mean that tank-beds by being so assigned

become converted into ryoti land. Tank-beds having been excluded from ""ryoti land"" by the definition of that term, it was considered necessary to

confer certain powers in respect of tank-beds in express terms. The provision in question cannot therefore have the effect contended for. If

authority be needed for this position, *Bolusawmy v. Venkatadri Appa Rao* (1917) 47 I.C. 594 decides this point.

11. In the result, the Civil Revision Petitions are dismissed with costs. The Advocate's fee in each Civil Revision Petition is fixed at Rs. 10.

Vepa Ramesam, Kt. Officiating, C.J.

12. I agree.