

(1954) 02 MAD CK 0032

In the Madras High Court

Case No : Writ Petition No's. 229 etc. of 1952

Muthu Velu and Others

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 19-02-1954

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226, 32
Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 23, 67(1), 67(2)

Citation : AIR 1954 Mad 1078 : (1955) ILR (Mad) 233 : (1954) 67 LW 754 : (1954) 2 MLJ 636

Hon'ble Judges : Rajamannar, C.J.;Umamaheswaram, J

Bench : Division Bench

Advocate : G.R. Jagadisan, R. Ekambaram, A. Srirangachariar, K.V. Srinivasa Iyer, M.S. Venkatarama Aiyar, S. Viswanathan, B.R. Dholia and S. Thyagaraja Aiyar, for the Appellant; A.G., M.M. Ismail, for Govt . Pleader, for the Respondent

Judgement

Rajamannar, C.J.—These petitions filed under Article 226 of the Constitution relate to the levy of assessment on private lands in inam villages which were taken over under the provisions of Madras Act 26 of 1948.

Under Section 13 of that Act, in the case of an inam estate the land-holder is entitled to ryotwari patta in respect of lands which immediately before the notified date belonged to him as private lands within the meaning of Section 3(10)(b) of the Estates Land Act or stood recorded as private land.

Under Section 16 (1), every person, whether a landholder or a ryot, who becomes entitled to a ryotwari patta under the Act in respect of any land shall with effect on and from the notified date be liable to pay to the Government such assessment as may be lawfully imposed on the land.

Under Section 22 of the Act, a ryotwari settlement of all the estates including inam estates taken over under the Act is contemplated. Until such ryotwari settlement effected in pursuance of Section 22 has been brought into force, the

method of determining the land revenue payable to Government with effect on and from the notified date is set out in Section 23, Clause (a) provides for any land held for purposes of agriculture, not being private land. Three alternative bases are mentioned viz, (1) where the rent payable to the landholder has been determined under the Madras Estates (Reduction of Bent) Act, 1947, the rent so determined, or (2) where the rent has not been so determined, the rent which, would, have been payable to the landholder in respect of the fasli year in which the estate is notified, or (3) where no rent was payable, the rent which would be payable to the landholder immediately before the notified date, by a ryot holding similar land with similar advantages in the neighbourhood.

Clause (b) of Section 23 provides that in respect of other lands -- and private lands would come within this category -- the land revenue shall be calculated at such rate or rates as the Government may, by general or special order, determine. In exercise of the powers conferred u/s 67(1) and (2) of the Act, the Government, by means of a rule, delegated their powers u/s 23 (b), to the Board of Revenue, and in exercise of these powers so delegated, the Board issued: on 16-6-1950 certain instructions for the fixation of land revenue for the different classes of lands falling u/s 23 (b) including private lands of landholders.

The material extract from these instructions relating to private lands is as follows:

"Landholder's private land for which he is entitled to ryotwari patta u/s 12(a), or 13 (a), or 14 (a) read with Section 13(a) or 14(b) read with 12(a): The Rent Recovery Act is not applicable to villages where there are no ryoti lands. Reduced rent has been fixed in respect of all estate villages where there are ryott Lands. If there are tooth grain rent and cash rent lands or cash rent lands only in a village the land revenue on a private land shall be the same as that of a similar land with similar advantages in the neighbourhood and generally it is the cash rent land that should be taken for comparison. But it may so happen that the land to be compared with is a grain Tent land. No comparison need be made in such cases; but the highest ryotwari rate in the district for the same class of land shall be adopted, garden land being treated as dry land. The land procedure should be adopted in the case of villages where there are only grain rent lands. In the case of private lands in villages where there are no ryoti lands fixation of land revenue by comparison is not practicable. In such cases, the higher rates in the near fest village where conditions are similar shall be adopted."

2. The Collector of Tanjore proceeded to levy assessment on the private lands in the inam estates which are the subject matter of these writ applications in accordance with the above instructions. In so far as the principle of fixing the assessment is to adopt the assessment of a similar land in the vicinity in the same village and in so far as no distinction is made between private lands of a landholder and ryoti lands in fixing assessment by reason only of the fact that the one belongs to the landholder and the other to the ryot, the petitioners have no complaint. Indeed, there cannot be any room for complaint.

In the counter affidavit filed by the Assistant Secretary, Board of Revenue (Settlement of Estates) on behalf of the State, it is said, explaining the policy of the Government, that it was considered that it was only proper that in the case of a landholder's private land, the land revenue should as far as possible be equivalent to the land revenue payable for a similar ryoti land with similar advantages in the neighbourhood. This is an extremely commendable attitude on behalf of the Government. The petitioners do not object to taking only the ryoti lands bearing cash rent for "purposes of comparison when there are both grain rent and cash rent lands in the village, Nor to they object to the adoption of the highest rates for ryoti lands in the nearest village where conditions are similar in the case of private lands In villages where there are no ryoti lands for purposes of comparison.

But the petitioners do object to the method of calculation adopted when the ryoti land to be compared with in the village is grain rent land. According to the instructions, in such a case, no comparison need be made, but the ryotwari rate in the district for the same class of land shall be adopted, garden land being treated as dry land. It is now common ground that "class" mentioned only refers to the division into wet and dry. By a subsequent order of Government (G. O. No. 1858 Revenue dated 1-7-1953), the highest rate in the taluk has been adopted instead of the highest rate in the district. But this alteration was to be given effect to only from fasli 1363.

3. The petitioners state that this method of assessment is opposed to Article 14 of the Constitution, because there has been an unjust discrimination between the owner of private lands and a ryot, both of whom are entitled to ryotwari pattas under the Estates Abolition Act.

The point is thus developed in the affidavit filed in support of the application.

"Persons under the same circumstances or property of the same character should be taxed by the same standard. No greater burden should be laid upon one than is laid upon others in the same calling and condition. The rule of assessment or taxation for properties of the same kind must be the same and cannot vary from individual to individual. The action of the Government cannot be justified in any manner whatsoever, there being absolutely no reason why a cultivator whether he is a ryot, owner of a private land, or ryotwari proprietor, should be made to pay differently".

The learned Advocate General tried to convince us that there has been no unfair discrimination against the landholder in respect of his private lands. The Government had found that generally speaking the highest ryotwari rate in the district or taluk was far less than the commuted money rent where grain rent prevailed.

He supported his argument by reference to the amendment made by Act 39 of 1951, which amended Section 3 of Act 30 of 1947. It "inter alia" provided that where the rate of rent payable in respect of ryoti land of any class is wholly in

kind or partly in kind and partly in cash and the aggregate money value of the rent so payable exceeds the higher rate of the ryotwari assessment payable for any land of the same class in the revenue district in which such ryoti land is situated, then only the latter rate of rent shall be payable in respect of the land. This amendment, he said, was found necessary because in most cases it was found that the highest rate in the district was less than the rate arrived at after commutation.

We are willing to accept that this might be so in many cases. But what the petitioners say is that the same method might be adopted in respect of private lands also. That is to say, if the commuted money rent payable in respect of the grain rent ryoti lands in the village which are taken up for comparison is higher than the highest rate of assessment in the district or taluk of similar ryotwari land, then the latter may be adopted as the proper assessment for the private land. But if such commuted money rent of similar ryoti lands in the village is less than the highest rate in the district or taluk, the petitioners say that such rate should be adopted for the private lands as well. They contend that there can be no discrimination between ryoti lands and private lands in the matter of levying assessment.

The petitioners seek to bring home the mischief of such discrimination by reference to cases where according to the method adopted by the Government, the highest rate in the district has been imposed on land of a poor and inferior quality. In "W. P. No. 229 of 1952," for instance, the lands concerned are situated in a village in Pattukottal Taluk, Tanjore district. The petitioner there alleges that all the lands in that taluk are definitely below class 4 in the matter of "tharam", but according to the instructions of the Board of Revenue, the highest assessment in the district at the rate of Rs. 16-10-0 per acre will be leviable on these inferior lands in the taluk. There is no justification for the Government to levy an assessment at such a high rate on lands which are admittedly far inferior to the class on which the highest assessment is imposed.

4. There is considerable force in this contention on behalf of the petitioners and certainly considerable equity. It is no doubt true that MI Civil Court has no authority to decide any question as to the rate of land revenue payable to the Government. This court cannot certainly lay down what the proper rate of assessment is in respect of any particular land (vide Section 58 of the Madras Revenue Recovery Act). But, in our opinion, the validity of an assessment by Government can be questioned under Article 226 or under Article 32 of the Constitution on the ground that it is in a particular case discriminatory. Likewise, even where the basis of assessment is opposed to the principle embodied in Article 14 of the Constitution, appropriate relief can be granted under the above Articles. To take an obvious case, if the Government were to pass an order directing assessment at a particular rate to be made on lands belonging to persons of one community and an altogether different rate, higher or lower, on lands belonging to persons of another community, the nature of the lands being

the same, such an assessment can certainly be declared to be void as offending the principle of equal protection of the laws and Article 15 of the Constitution.

5. It cannot of course be denied that the Government is entitled to make a classification of lands for the purpose of assessment. But it is equally obvious that such a classification must be related to the purpose, namely, the levy of land revenue. Otherwise, it would be an arbitrary division and not a proper classification.

The principles on which classification can be made by the State or by the Legislature have been so well established that it is unnecessary to do more than refer to the judgment of the Supreme Court in -- "State of Bombay v. F. N. Balsara", AIR 1951 SC 318 (A). Applying those principles, we consider that the discrimination made between ryoti lands and private lands in the particular case, namely, where the ryoti land to be compared bears a grain rent, cannot be justified on any principle of valid classification. Just as in the case of ryoti lands bearing cash rent such rent is taken as that which should be adopted, likewise In the case of grain rent land the rent as converted in the manner provided for ryoti land can be well adopted in the case of private lands also. Why should only in this contingency the highest ryotwari rate in the entire district which presumably covers a wide area of land be adopted irrespective of the fact that the lands bearing the highest rate may be far superior to the private land concerned?

6. In the circumstances, we direct that the State shall refrain from adopting the principle of imposing assessment as the highest ryotwari rate in the district or the taluk on private land in a village in which the ryoti lands of a similar class bear only a- grain rent. There will be no order as to costs.