

(1949) 12 PRI CK 0001

In the Privy Council

Case No : Privy Council Appeal No. 11 of 1949

N.S. Krishnaswami Ayyangar and others

APPELLANT

Vs

Perumal Goundan (since deceased) and others

RESPONDENT

Date of Decision : 15-12-1949

Acts Referred:

Citation : (1950) AIR(PC) 105

Hon'ble Judges : John Beaumont, Radcliffe, Oaksey, Lords Greene, JJ.

Advocate : S.L. Polak and Co., Chapman Walkers, B.K. Mookerjea, J. Chinna Durai, P.V. Subba Row, C.S. Rewcastle, for the Appearing Parties.

Judgement

Sir John Beaumont, J.

This is a consolidated appeal by special leave from a decision of the High Court of Judicature at Madras dated 30th July 1946. At the conclusion of the arguments their Lordships announced that they would humbly advise His Majesty that this appeal be dismissed with costs, and they now give their reasons.

2. The consolidated suits out of which this appeal arises were filed in the year 1939 by the respondents as ryots against the appellants as landowners in the Court of the Deputy Collector Salem, claiming a grant of pattas under S. 55, Madras Estates Land Act of 1908. The respondents claimed rights of permanent occupancy in the lands held by them in the village of Bairoji, District Salem, on the ground that such lands formed part of an estate as defined by the Madras Estates Land Act of 1908 as amended by the Madras Estates Land (Third Amendment) Act, 1936. The appellants denied that the lands formed part of an estate, and claimed that the said Acts had no application to the case.

3. By S. 3 (2) (d) of the Act of 1908 "Estate" is defined as meaning any village of which the land-revenue alone has been granted in inam to a person not owning the kudivaram thereof, provided that the grant has been made, confirmed or recognized by the British Government, or any separated part of such village. It is not disputed that the appellants owned the kudivaram as well as the melvaram in

the lands in question, and that such lands therefore did not come within the above definition.

4. However, S. 2 of the said amending Act of 1936 provides that for sub.cl. (d) of cl. 2 of the Act of 1908 the following sub-clause shall be substituted, viz.:

"Any inam village of which the grant has been made, confirmed or recognized by the British Government, notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees.

Explanation (1)- Where an inam village is resumed by the Government, it shall cease to be an estate; but, if any village so resumed is subsequently regranted by the Government as an inam, it shall from the date of such re-grant, be regarded as an estate.

Explanation (2)- Where a portion of an inam village is resumed by the Government, such portion shall cease to be part of the estate, but the rest of the village shall be deemed to be an inam village for the purposes of this sub-clause. If the portion so resumed or any part thereof is subsequently re-granted by the Government as an inam, such portion or part shall, from the date of such re-grant, be regarded as forming part of the inam village for the purposes of this sub-clause."

5. Upon this definition two arguments were addressed to the Board on behalf of the appellants. First that the village in which the lands are situated is not an inam village, but is held on ryotwari tenure; secondly that, even if the village is an inam village, the grant thereof did not comprise the whole inam village and on that ground also it was not brought within the definition.

6. The early history of the village of Bairoji appears from entries in the Inam Register of 1865, Ex. A. It appears that the village in pre-British times was granted as a sarva inam (free of assessment) to two persons who divided the village into 54 vritties or shares, and that subsequently the properties were either sold or given to a community of Brahmins. During the rule of Tippu Sultan a jodi or quit rent of 1280 pagodas was fixed as payable to the Government by the persons in possession. In 1795 one Captain Maclean fixed the jodi at 1026 pagodas, equivalent to Rs. 1,294-9-0. In making this settlement he converted 81 acres which had been zufted, or attached for non-payment of government revenue, into ryotwari lands, the rest of the village being retained as inam. The part converted into ryotwari tenure was only $2\frac{7}{8}$ shares out of the 54 shares. At the time of the Inam Settlement in 1865 the total assessment was shown as Rs. 3, 420-13-1 divided between the wet land and the dry land which together comprised an area of 769a-41C. The poramboke or waste land containing 273a-13C was deducted in arriving at the assessment. The quit rent payable on the properties was fixed at Rs. 1,545.

7. In the year 1894 the inam village of Bairoji was attached by government for

nonpayment of revenue, and in 1895 it was sold at auction to Srinivasa Ayyar for Rs. 41,000. The particulars of the sale have not been included in the record, but it was admitted in the High Court that what was sold was the right, title and interest of the inamdars, and that there was no condition imposed that the lands should be held by the purchaser on ryotwari tenure.

8. On 6th December 1895, a sanad was granted by the Government of Madras to the purchaser, a certified copy of which is Ex. 1. The record before the Board does not disclose by whom this copy was certified. The only witness called for the appellants, whose name was also Srinivasa Ayyar, said that it was a true copy of the sanad, but that he did not get a certified copy from the Collector's office. He also said that the original had been filed in a civil suit and not taken back, and that the Court said it had been destroyed. As the questions which arise for decision depend on the construction and effect of this document it must be set out in extenso :

"Whereas Srinivasa Ayyar, son of Kantesa Vankataramier of Erode, has purchased at public auction the agrapharam specified below to be held on ryotwari tenure subject to an assessment of Rs. 1,754-9-7 and has paid into the treasury at Salem, the sum of Rs. 41,010 being the purchase money of the said agrapharam, I hereby, acting under the authority of the Governor-in-Council of Madras, confirm the said agrapharam to the said Srinivasa Ayyar and heirs to be held by them as aforesaid subject to all the conditions and incidents of ryotwari tenure.

SPECIFICATION OF THE AGRAHARAM

Registration Name Extent Assessment Sum paid Date of

District sub-district Village if any Survey number payment

A. C. Rs. A. P. Rs.

Salem... .. Razipore ... Bairoji Entire agrapharam with all agrapharam the rights of the registered holders-

Ayacut 1,042-54-

Deduct poramboke 273-13-

Net holding containing 769-41-

Dry 643-86 2,344 4 0

Wet 125-55 1,076 9 1

Total ... 769-41 3,420 13 1 41,010

25.3.1895

and

Quit-rent ...- 1,540 12 9

19.4.1895

Road-cess ...- 213 12 10

Total ...- 1,754 9 7

(Signed) M. AZIZUDDIN,

Deputy Collector.

9. At the trial before the Deputy Collector it was held on the construction of Ex. 1 that the tenure under it was ryotwari tenure, and that the Madras Estates Land Act of 1908 as amended did not apply. The suits were therefore dismissed. The respondents appealed to the District Court at Salem, The District Judge allowed the appeal, holding that the grant was a grant under inam tenure and that the inam satisfied the definition of "estate" contained in the said amending Act of 1936. The suits were remanded to the lower Court for disposal according to law. An appeal from this decision taken to the High Court of Madras was dismissed, the learned Judges agreeing substantially with the views of the District Judge.

10. As already indicated the first question to be determined is the construction of Ex. 1. It was conceded by the appellants in the High Court that the words in the recital "to be held on ryotwari tenure" were inserted by mistake since there was no such condition in the contract of sale. The appellants, however, relied on the concluding words "to be held by them as aforesaid subject to all the conditions and incidents of ryotwari tenure," words which, they say with truth, are clear and unambiguous. The document must, however, be construed as a whole. In the body of the deed the property sold is described as "the agraharam specified below," and agraharam is a word apt to describe property held on inam tenure, but not apt to describe property held on ryotwari tenure. In the specification the property sold was described as "Bairoji agraharam . . . Entire agraharam with all the rights of the registered holders." The only rights of registered holders were those appearing in the inam register; the land had never been held on ryotwari tenure and there were no registered holders of lands so held. The particulars in the specification are clearly taken from the Inam Settlement of 1865. The areas of the poramboke or waste land, and of the dry and wet lands, and the figures of the assessment are identical. The only discrepancy is that the quit rent in Ex. 1 is Rs. 1,540-12-9 in place of the figure of Rs. 1,545 in the Inam Settlement, a small discrepancy which has not been explained. It is plain that what was expressed to be granted by Ex. 1 was inam property, and the direction that the property granted was to be held subject to all the conditions and incidents of ryotwari tenure is a contradiction in terms. The Court must either reject the description of the property sold, or the condition upon which it was directed to be held. In deciding which part of the deed to reject it is relevant to observe that the grant purported to carry out a contract for the sale of inam land. No doubt if the terms of the conveyance were clear they would override the contract, but if part of the conveyance must be rejected it is legitimate to lean towards the rejection of that part which is inconsistent with the contract Taking Ex. 1 as a

whole, and bearing in mind the circumstances in which it was made, their Lordships have no hesitation in holding that it is a grant of land to be held on inam tenure.

11. The learned District Judge and the Judges of the High Court regarded Ex. 1 as an ambiguous document, and, in construing it, relied upon the way in which it had been read by the parties as disclosed in the documents on record. How far the construction of a modern document can be affected by the interpretation placed upon it subsequently by the parties is a question not free from doubt, and their Lordships prefer to base their decision as to the meaning of the document upon the language in which it is expressed without regard to the subsequent conduct of the parties. There is, moreover, this further difficulty in relying upon the interpretation said to have been placed on the document by the parties; that it does not appear from the record that the parties concerned ever considered the construction of this document. (After discussing the evidence their Lordships proceeded)

12. The second question raised is whether the grant was one of a whole inam village. As already explained the inam had been granted in pre-British times but had been recognised by the British Government. In 1795 a small part of the village was resumed by the government and granted in ryotwari tenure, but the rest of the village, by far the larger part continued to be treated as an inam village. It is not necessary to consider the validity of the argument advanced by the appellants that after 1795 the inam village was only part of a whole inam village, since, when the Government resumed possession in 1894, the inam village became Government land and not subject to any particular tenure. In 1895 the Government granted on inam tenure (as their Lordships have held) the whole village, that is the whole village which for the past 100 years had been recognised as an inam village. In their Lordships' view it is irrelevant that the village so granted had once formed part of a larger village. The important fact is that the grant of 1895 comprised the whole of what was then regarded as an inam village. The evidence of the Revenue Inspector, Salem, Virapandi taluq, called on behalf of the respondents supports the view that the Bairoji aghaharam is an inam village, and that the Bairoji village held on ryotwari tenure is separate. In the view of their Lordships therefore the subject-matter of the grant of 1895 falls within the definition of "estate" contained in S. 3 (2) (d), Madras Estates Land Act, 1908, as amended by the Act of 1936, and it is not necessary to have recourse to the explanations to the amended definition.

13. A further argument advanced on behalf of the appellants was that Ex. 1 was not a grant of the whole inam village because the poramboke or waste land was excluded in the specification of the aghaharam. In their Lordships' view the words in the specification "Deduct poramboke 273-5-4" (which are taken from the Inam Settlement) do not mean that the poramboke was excluded from the grant, but merely that it was deducted in ascertaining the assessment, since waste land is not assessed. This view accords with the opinion expressed by the

learned District Judge; the point does not seem to have been discussed in the High Court.

14. In their Lordships' opinion for the above reasons the appeal must fail.