
(1997) 09 MAD CK 0029
In the Madras High Court

P. Jayaraman alias P.J. Raman and Another APPELLANT
Vs
State of Tamil Nadu and Others RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1998) 3 LW 430 : (1998) 3 MLJ 289

Hon'ble Judges : V. Rengasamy, J

Bench : Single Bench

Judgement

V. Rengasamy, J.—These writ of certiorari petitions have been filed under Article 226 of the Constitution of India to quash the order of levy

on the cultivable lands in the ayacuts of Parambikulam-Aliyar Project. The writ petitions W.P. Nos. 4922 and 5317 of 1988 have been filed by the

Agriculturists Welfare Associations through its Secretary A.Shanmugasundaram, and the other petition has been filed by an individual in respect of

the assessment on his lands.

2. The petitioners, viz., the agriculturists, who are members of the welfare association, are having lands in the old ayacut of Pallivilangal,

Ariyapuram, Karappatti, Periyana and Vadakkalur canals. These five canals are distributors of the main river Aliyar and these five distributors

feed the old ayacut consisting of about 6,400 acres. There are five small old dams constructed about 300 years ago in the Aliyar river, which

facilitates to regulate the flow of water in the said distributors. Many of the old ayacutdars have been raising two crops and some, single crop in a

year and a third dry crop, such as groundnut, also was raised with the Aliyar river water. During the Second Five Year Plan, the Government of

Tamil Nadu devised the Parambikulam Aliyar Project system to harness the water for the purpose of power generation and agriculture. From

Aliyar dam, water is fed into Aliyar river. On account this project, new ayacuts, to an extent of 34,988 acres were brought under dry irrigation. At

the time of construction of Parambikulam project, the Government of Tamil Nadu had entered into a bilateral agreement with the Government of

Kerala undertaking to supply 7.5 T.M.C. of water through Aliyar river on priority basis.

3. The petitioners have alleged in their affidavit expressing their grievances as follows:

On account of Parambikulam Aliyar Project, Vettaikaranputhur Canal and Pollachi Canal were constructed and due to the increase in the new

ayacut area, coconut cultivation was extended, which required water throughout the year and added to that, wells were sunk with the approval of

the Government to tap the seepage and percolation water to cultivate paddy and other crops, on account of which the regular quantity of water

supplied to the old ayacutdars is diminished. Further as the water has been diverted to Kerala on priority basis, there is delay in the water supply to

the old ayacutdars and they have to commence the agricultural operations belatedly, out of season. So, the paddy crop raised during June could be

harvested only in October when the south west monsoon would become active on account of which, the harvest also was seriously hampered and

the difficulty arose in storage of the harvested paddy, causing damage to. the agriculturists. About one fourth of the yield is lost in this manner. The

second crop raised, immediately after the first harvest in November, which would be ripe in February of the following year, does not give optimum

yield. Prior to Parambikulam Aliyar Project, there was uninterrupted regulated and abundant water flow in the Aliyar river and its five old

distributors. The cultivation and harvest commenced in the ideal seasons. But, now after the construction of Aliyar dam, the agriculturists have been

adversely affected because of the dearth of water on account of the increase in the ayacut area. Many of the ayacutdars have stopped to raise the

dry crops such as groundnut, as third crop, for want of water facility. When the situation is like that, the Government has collected betterment levy

of Rs. 100 per acre from the old ayacutdars also on the assumption that the old ayacutdars have benefitted by the construction of the Aliyar dam.

Further, the government has raised the land revenue to the old ayacutdars steeply without any reason, by levying flat rates. The old ayacuts consisted of lands classified as Class 1 and Class 2 but now, the Class 2 lands are also classified as Class 1 lands, without any reason, Now, all the lands are treated alike and flat rate of revenue is being charged. For the single crop lands, the old rates were ranging from Rs. 3.50 to Rs. 9.95, but now the flat rate is levied at Rs. 25 per acre, whereas for the double crop lands, for which the old rates were ranging from Rs. 4.69 to Rs. 10.25 now the flat rate is fixed at Rs. 37.50. This type of assessment, without any reason and without properly classifying the lands according to their "tharam" (quality) is discriminatory, unreasonable, oppressive and illegal. The classification of soils and grouping them according to "tharam" (quality), the sources of irrigation, the determination of commuted prices and the conversion of the grain out-turns into money value, the determination of the allowance to be made for vicissitude of seasons and unprofitable areas, the calculation of expenses of cultivation and the cost of transportation of output and market conditions are the fundamental principles evolved for the levy and collection of the land revenue. But, without following these principles, now the flat rate levy is assessed at Rs. 25 for the single crop lands and Rs. 37.50 is assessed for the double crop lands, which has neither reason nor justification. The lands are in the same position without any alteration except the conditions relating to the sources of water supply, which has become adverse now. Therefore, the infliction of the high rate of revenue is contrary to the principles of the re-settlement. Treating the unequals as equals would be violative of Article 14 of the Constitution. Before resorting to revision of rates of revenue, the Government ought to have done mandatory exercise required therefore. The present re-classification of the lands is arbitrary based only on assumptions and presumptions. The re-classification will result in the reduction of the extent of the land, which could be held by the ryots under the Tamil Nadu Land Reforms Act. So, by this unreasoned classification, the right to property, which is a fundamental right, is taken away indirectly by arbitrary exercise of executive power. Even though the old ayacutdars in the upper reaches of the river are riparian owners entitled to cultivate the lands on priority, now because of the agreement with the Government of Kerala, where 20,000 acres are cultivated with this water of Aliyar

project, there is no stabilisation of water supply to the old ayacuts though the dam was constructed only for the benefit of the old ayacutdars. The

land revenue shall not exceed the value of half share in the committed value of the grain output. The present increase in the rate of land revenue by

400% is in excess of the share the State is entitled to, besides being oppressive, punitive and arbitrary. Even though the Government has granted

stay of collection of revised land revenue, old ayacutdars, without prejudice to their rights, were allowed to pay about Rs. 18 per acre irrespective

of the double crop or single crop for the present. On the representation of the ayacutdars, the first respondent Government issued a G.O.Ms. No.

1487, dated 27.6.1975 fixing the old rate of levy for the first crop waiving the new rate of levy and allowed the new rate for the second crop. But

somehow, this G.O. has been withdrawn by G.O.Ms. No. 1961, dated 10.9.1981. Therefore, these writ petitions have been filed for the issue of

Writ in the nature of writ of certiorari or any other suitable direction to quash the G.O. No. 2510 (Revenue), dated 7.8.1970, by the first

respondent.

4. Mr. M. Venkatachalapathy, learned Senior Counsel for the petitioners, has raised twin contentions as to the manner of the assessment of levy to

the ayacutdars of parambikulam Aliyar project. According to the learned Senior Counsel, the assessment is not only arbitrary without any

rationale, but also it is contrary to the principles embodied in the Standing Orders of the Board of Revenue. The learned senior counsel would

submit that the assessment fixed in G.O. No. 2510, dated 7.8.1970, which commenced from Fazlee 1380 and is given effect to as on today, fixes

the levy of assessment classifying the lands into two crops, one single crop land, and the other double crop land, and has levied a flat rate of Rs. 25

for the single crop lands and Rs. 37.50 for double crop lands, per acre, without classifying them according to the quality of the land and this is an

arbitrary nature of classifying the lands, namely, equating the unequal lands, is a discrimination and violative of Article 14 of the Constitution. He

refers to Standing Orders 1(3) of Volume I, Chapter 1 relating to assessment and disposal of land, which prescribes that the assessment to be

fixed so as not to exceed half a net produce after deducting the expenses of cultivation etc. and under Sub-rule (4) in the same order, it is

mentioned that the levy for the second crop will be generally half of the first crop assessment and there is nothing to show that the assessment was

levied on this principle embodied in the Standing Order of the Board of Revenue. The learned senior counsel would further refer to the Standing

Order 2 under the same Chapter (Chapter I) relating to the commutation of the Government's demand, which reads,

In carrying out the settlement with reference to the foregoing principles, the settlement Department divides the soil into certain classes with

reference to their mechanical composition, subdivides them into sorts or grades with reference to their chemical and physical properties and other

circumstances affecting their fertility, and attaches a separate grain value to each grade after numerous examinations of the actual outturn of the

staple products in each class and sort of soil. The grain value is then converted into money at the commutation price, based generally on the

average of the 20 non-famine years immediately preceding the settlement, for the whole district, with some abatement for traders profits and for the

distance the grain has usually to be carried to the markets, and from the value of the gross produce thus determined, the cost of cultivation and a

certain percentage on account of vicissitudes of season and unprofitable areas is deducted, and one half of the remainder is the maximum taken as

assessment or the Government demand on the land. After this, soils of similar grain values, irrespective of their classification, are bracketed

together in orders called Tharam", each with its own rate of a settlement. These rates are further adjusted with reference to the petition of the

villages in which the lands are situated and the nature of the sources of irrigation. For this purpose villages are formed into groups, in the case of

dry lands, with reference to their proximity to roads and markets, and, in the case of wet lands, with reference to the nature and quality of the

water supply. This accounts for different rates of assessment being imposed on lands of similar soils, but situated in different groups or under

different classes or irrigation.

5. According to learned senior counsel the tharam (quality) of the land is an important factor to be taken into consideration while determining the

assessment because of lands of different qualities having difference in the yield, cannot be levied with the same assessment as it would amount to

disparity in the assessment and after the Parambikulam Aliyar Project, the old ayacutdars, who were paying the lesser assessment towards the land

tax, have now been assessed to pay Rs. 25 per acre for the single crop lands and Rs. 37.50 for the double crop lands as per G.O.Ms. No. 2510

dated 7.8.1979, without ascertaining the quality of the lands, as among the single crop lands and double crop lands, apart from the fact that even

this rate is not on the basis of any rationale but arbitrary and therefore this Government Order fixing the levy of assessment has to be quashed. He

also submitted that before the Parambikulam Aliyar Project was introduced, there was flow of water through five canals, viz. Pallivilangal,

Ariyapuram, Karapatti, Periyanaï and Vadakkalur and the water was feeding the ayacuts consisting of about 6,400 acres and during that time, in

the tail-end area, single crops were raised and in other areas, double crops were raised and with the surplus water, they raised the third crop

groundnut and there was no scarcity of water during those years, but after the commencement of Aliyar Parambikulam Project, the ayacuts in

Tamil Nadu have been considerably increased apart from the fact that 7.5 T.M.C. water has to be supplied to Kerala under the bilateral

agreement and with the water that was irrigating 6,400 acres, now new ayacuts to an extent of 34,988 acres are brought under cultivation, resulting

in the diminution of the supply of water to the old ayacutdars, who have been compelled to start their cultivation in the late season because of the

priority of water to Kerala ayacutdars and these difficulties have considerably reduced the yield also.

6. Even though it was argued before me that after the commencement of Parambikulam Aliyar Project, the old ayacutdars are not getting adequate

supply of water, which they were accustomed to get in the previous years, except the allegation in the affidavit, there is nothing to substantiate that.

Before the construction of the dam, the water was not regulated and only during the monsoon season, there would be water in the canals and

thereafter, there was no possibility for cultivation unless they depended on the sub-soil water. But now, due to the Parambikulam Project, there is

storage of water and it is regulated according to the needs of the area. Therefore, without any acceptable evidence, the allegation that the old

ayacutdars are not getting the accustomed supply of water, cannot be accepted.

7. Unless, the Parambikulam Aliyar Project is beneficial to the ayacutdars, the Government would not have embarked upon this massive scheme

investing several crores of Rupees in the construction of the dams. The storage of water itself is beneficial to the ayacutdars, apart from the fact that

there would be improvement in the underground water level also. Therefore, certainly this project is very much beneficial to the old ayacutdars and

the new ayacutdars. It appears from the representation of the Additional Government Pleader that only in the year 1912, before the issue of the

impugned Government Order, the then existing levy of assessment was fixed. Thereafter, for more than 50 years, the assessment remained

unrevised. The Government has every right to revise the assessment once in thirty years and in this case as new water scheme was introduced

benefiting the ayacutdars, certainly, the Government had the right to revise the assessment towards the land tax and the learned Senior counsel has

not questioned the right of the Government to revise the assessment of the land. But his contention is that the assessment revised under the

Government Order is arbitrary, capricious and unreasonable. After the issuance of this Government Order, in the year 1970, representations were

made by the elected representatives and also the representatives of the various agricultural organisations. After taking into consideration their

representations, the Government issued another Government Order, G.O.Ms. No. 1487, dated 27.6.1975, by which the Government had

modified the Government Order issued in the year 1970. Under the new Government Order, the existing levy prior to 1970 was allowed to

continue for the single crop wet lands and for the first crop in the double crop lands, waiving the new rates of levy. In so far as the double crop

lands, for the second crops in the double crop lands and the new cases of second crop cultivation in the single crop lands, the new rates fixed

under the Government Order in the year 1970 was made applicable. In view of this Government Order, the cultivators of single crop and the first

crop in the double crop lands, were benefited as they were allowed to pay the old rate of levy that was prevalent prior to 1970. However, this

concession was withdrawn by G.O.Ms. No. 1961, dated September, 1981 in which the Government has stated that as the reservoir had

conferred benefit to the ayacutdars by the regulated supply of water and the increased levy was introduced in the other parts of Tamil Nadu where

reservoir projects were implemented and on the recommendation of the Board of Revenue the concession granted in G.O.Ms. No. 1487, dated

27.6.1975 was withdrawn and the original Government Order G.O. No. 2510, Revenue, dated 7.3.1970 once again came into effect from Fazlee

1391.

8. As mentioned above, the construction of the reservoir for the storage of the water, so that it could be properly regulated, should have certainly

benefitted the ayacutdars, who were previously depending upon the vagaries of monsoon. So, on account of the change, the State is entitled to

enhance the levy of land tax.

9. But the question is whether there is any rationale in fixing the flat rate levy at the rate of Rs. 25 for single crop lands and Rs. 37.50 for the double

crop lands. At the risk of repetition, it has to be mentioned that Standing Order 2 of Volume I, Chapter I gives the guidelines to the Government to

arrive at the assessment. According to these guidelines, the Settlement Department has to divide the soils into certain classes with reference to their

composition, then sub-divide them into sorts with reference to then-chemical and physical properties affecting the fertility of the soils and after that,

the grain value to each grade has to be given, taking into consideration of the actual out-turn of the produce and the grain value thereafter is to be

converted into money at the commutation price. The classification of the tharam is an important basis for the levy under this Standing Order.

Standing Order 1(3) fixes the ceiling of the assessment and it reads that it should not exceed half the net produce after deducting the expenses of

cultivation. On a perusal of the G.O. No. 2510, dated 7.8.1970, Column No. 4 mentions the number of crops, Column No. 5 mentions the

tharams and Column No. 6 gives the then existing land tax. We are able to see in these columns that even as among single crop lands, there were

different kinds of tharams on account of which, the levy also differed. Similarly, for the double crop lands also, the tharam in the money value

ranges from 6.4.5 (rupees-anna-paisa) upto 8.5.7 (rupee-anna-paisa) This indicates that the lands under the ayacuts had different tharams even as

among the single crop lands and also double crop lands and therefore, according to the tharam of the land, assessment also varied. In single crop

lands, a land may be situated in a tail end or in the high land, where the free

flow of water may not be possible on account of which the supply of water will be very much less when compared to other single Crop lands situated in better located places. Similarly, in the double crop lands also, the yield depends upon the fertility of the soil. The double crops are raised because of the availability of the water. But the yield may differ from land to land according to the fertility of the soil. Some lands may be saline in nature and some low lying land may be marshy and yet other lands may be of red soil, suitable for cultivation of certain variety of crops alone. It is because of the difference in the fertility of the soil location, column No. 5 of the G.O. No. 2510 gives different tharams in both single crops lands and double crop lands. But G.O. No. 2510, dated 7.8.1970 does not discern the differences in the tharams of the lands for the purpose of assessment and it levies flat rate at Rs. 25 for single crop and Rs. 37.50 for double crop lands. When the State has classified the lands and grouped them according to their tharams for the purpose of assessment prior to 1970, we do not know why that principle was given up while the assessment was made in the year 1970 under this Government Order. It cannot be stated that on account of the Parambikulam Aliyar Project, the tharam of the lands also have been changed and all the double crop lands are uniformly of the same quality. The learned Additional Government Pleader Mr. R. Viduthalai has not answered as to why the Government has not considered the tharam of the lands. No doubt, it would be an irksome task involving considerable labour for the Survey Department and also the Soil Analyst. However, when the Board of Revenue's Standing Orders lay down the principles for assessment and tharam of the land also is a basis for the assessment, the State cannot skip over that principle for the easy way of assessment. Even though the Additional Government Pleader Mr. R. Viduthalai argued that classifying the land into the single crop lands and double crop lands is also an intelligible criteria for the classification because the State felt that the lands could be distinguished according to the number of yields, this method of classification cannot be said to be offending the rights of the ayacutdars. He also would submit that some line has to be drawn for fixing the tharam for the purpose of the assessment and the State has felt that classification of the lands according to the number of yields, is a reasonable line of distinction for the purpose of

assessment and when the Government is the best Judge to follow a new criteria in the classification of the lands, it cannot be said to be arbitrary as there is no error apparent in exercising the power of the State and therefore, there is no violation of Article 14 of the Constitution. I am unable to concede to this reasoning of the State. If the Government has not formulated any guideline for the purpose of assessment of levy, no doubt, this argument of the learned Additional Government Pleader may appear to be sound. But the State, after laying down the principles for the levy of assessment in the standing Orders of the Board of Revenue, is bound to follow the principles given therein. Further it is patent from column Nos. 4, 5 and 6 in G.O.Ms. No. 2510, dated 7.8.1970, that the ayacuts in Pallivilangal Vaikkal though were single crop lands, there were different assessments for the reason that the lands were unequal in their quality. Similarly, the ayacuts in the same Pallivilangal Vaikkal having double crops also had different assessments for the same reason namely inequality in their quality. So, when the State had made distinction among the lands and there were differences in the levy of land tax, in accordance with the standing orders of the Board of Revenue, now the State cannot bypass the principles and assess the land tax uniformly for all the single crop lands without distinction and similarly for the double crop lands as though they are all of the same quality. Therefore, treating the unequal lands equal for the purpose of collection of land tax is certainly violative of Article 14 of the Constitution.

10. The learned Senior counsel Mr. M. Venkatachalapathy mentions another aspect in equal classification of all the lands. When lands of low quality are classified along with the lands of high quality, the standard acre prescribed under the Land Ceiling Act will be attracted and under the said Act, even lesser extent of the land of low quality will be considered as a standard lands so that the extent will be reduced to bring it under the Land Ceiling Act. Therefore, the treating all the lands alike without classification, according to their tharams, leads to the other complications also, apart from the fact that the ayacutdars have to pay the same land tax uniformly irrespective of the fertility of the soil. Therefore, the G.O. No. 2510 (Revenue) dated 7.8.1970 is violating the rights of the ayacutdars, for which the same is liable to be quashed. No doubt, this is subject to the right

of the Government to re-fix the assessment following the principles mentioned above in accordance with the Standing Orders of Board of Revenue.

11. In the result, G.O.Ms. No. 2510 (Revenue), dated 7.8.1970 is quashed subject to the right of the Government mentioned above. The writ petitions are allowed. There will be no order as to costs.