

(1960) 11 KL CK 0028

In the High Court Of Kerala

Case No : A.S. No"s. 249 and 356 of 1956 (M)

Palghat Valia Raja

APPELLANT

Vs

T.S. Veeraraghava Iyer

RESPONDENT

Date of Decision : 29-11-1960

Acts Referred:

Land Acquisition Act, 1894 — Section 30

Citation : AIR 1961 Ker 222

Hon'ble Judges : T.K. Joseph, J;P. Govinda Menon, J;M.S. Menon, J

Bench : Full Bench

Advocate : T.S. Venkiteswara Iyer, C.S. Ananthakrishna Iyre and R.C. Plapilly, for the Appellant; K.Kuttikrishna Menon and V. Balkrishna Eradi, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—A. S. 249/56 (M) is filed by the 1st respondent in L. A. O. P. No. 595/54 is the jenmi of Akamalavaram, portions of which have been acquired in 1953 by the Government for the Malampuzha Reservoir Scheme. The land "belongs in jenmam to Emoor Bhagavathi Dcvaswom and the appellant, Palghat Valia Raja is the trustee of the Dcvaswom. A. S. No. 356/56 is by the tenant who was the 2nd respondent in the Court below.

2. The properties were outstanding under Exts. B1 and B2 two Cowle deeds executed by the Collector of Malabar to one Ravunni Nair. Under Ext. B3 the tenant's rights passed on to one Narayana Pattar. In June 1903, the then trustee of the Devaswom, granted a lease to Narayana Pattar as per Ext. B4 and the property is outstanding under this lease deed. Narayana Pattar's rights were assigned to the 2nd respondent under Exts B5 to B-7.

This property of 37 acres was acquired by the Government and the lands were valued at the rate of Rs. 1500/- per acre of double crop lands, Rs. 875/-per acre of single crop lands and Rs. 125/- per acre of dry lands. The amount and the

mode of valuation have not been disputed by the parties and it is agreed that no modification is necessary in respect of the amount awarded as compensation.

3. The only point for decision in the two appeals relates to the proportion in which the compensation awarded has to be apportioned between the landlord and the tenant. The learned Subordinate Judge of Palghat found that the proper and equitable way of apportioning compensation in respect of the paddy land was to give 1/4th to the landlord and 3/4th to the tenant. According to the appellant in A. S. 249/56, 1/3rd of the value ought to have been awarded to him and only 2/3rd to the tenant, The tenant who is the appellant in A. S. 356/56M contends that only 1/6th of the amount should have been awarded to the jenmi instead of 1/4th granted by the court.

4. There is no dispute that the lands acquired were all originally waste lands and that they were converted into paddy lands by the exertion of the tenants in possession. It is seen from Ext. B4 dated 15-6-1903 that the rent due to the jenmi is only 181 paras two edangazhis of paddy and it is therefore contended by the tenant that the jenmi would be entitled only to the capitalised value of the michavaram to be received by him and that the entire balance ought to have been awarded to him. On the other hand, the jenmi would say that the tenant had not effected any improvements in the property after he purchased the same under Ext. B7 on 19-1-1930 that he has only paid Rs. 11700/- and the value now claimed by him is out of all proportion to the amount he paid for the purchase of the property.

5. That the general rule is that the compensation amount should be apportioned between the landlord and the tenant according to the value of the interest which each has in the land acquired cannot be disputed. What those interests are is the question to be decided, and the same can be evaluated only on the basis of the rights that each had in the property at the time of the acquisition. In assessing the respective rights of the parties the possibility of a situation which might enable the jenmi to recover possession cannot be ruled out unless the law on the date of the acquisition completely shuts out such possibility.

So far as this case is concerned it may be observed that the tenant had no right of permanent occupancy on the date of the acquisition. Other rights such as sub-soil rights, right to quarry and right to minerals that the jenmi may have in the property also should not be ignored in valuing the interest of the jenmi. So the argument that the apportionment should be made only in the proportion of the respective income which the parties derive from the properties cannot be accepted.

6. Our attention was drawn to a decision of this Court reported in Krishna Ayyar v. Kuthiravattath Nayar 1958 Ker LJ 613 which was followed by the same Bench in the case reported in Raghavan Unni Vs. Athar Rowther and Others, regarding apportionment of compensation money between the jenmi and the tenant. It was held in these cases that after deducting the value of trees reserved for the jenmi

in the contract of lease or in respect of which he has the rights mentioned in Section 56 (3) of the Malabar Tenancy Act and also the value of quarries, if any, which were being worked by the jenmi and for which separate compensation was awarded, the balance was to be divided valuing the jenmi's interest on the basis of the rent he was getting.

This, if we may say so ignores the factors referred to above. We may in this connection observe that the Madras High Court has held in F.G. Natesa Aiyar and Others Vs. Kaja Maruf Sahib, that it is not proper to ignore the jenmi's rights other than the right to get the rent. We are in respectful agreement with this view. At the same time we may point out that it is not possible to lay down a hard and fast rule applicable to all cases as the nature of the lease, the improvements effected by the tenant, etc., may vary from case to case.

7. Bearing these principles in mind we have to see whether the proportion fixed by the learned Subordinate Judge is reasonable and fair and requires any modification. The learned counsel for the appellant has brought to our notice Exts. B8 to B23 and B30 to B32 which are certified copies of the orders passed by the Subordinate Judge of Palaghat in similar cases. In all those cases, the appellant was the jenmi and the tenants had agreed that the compensation amount may be divided in the proportion of 1/3rd to the jenmi and 2/3rd to the tenants.

Two of such tenants R. Ws. 2 and 3 were also examined on the side of the appellant. But as stated by the learned Subordinate Judge there can be no doubt that the conduct of these parties in agreeing to divide the compensation in the ratio of 1 : 2 and the solatium in half and half was mostly influenced by the views taken by that court on the basis of the decision in F.G. Natesa Aiyar and Others Vs. Kaja Maruf Sahib, But these admissions by some of the tenants cannot bind the jenmi or tenants claiming higher amount of compensation if according to law they would be so entitled.

8. According to the tenant his is a permanent lease, he having saswatham right in the property. Under the Cowle granted to the tenant there was only a right to reclaim the land without prejudice to the rights of the landlord. The rights and liabilities of the Cowledar have been considered in Secretary of State v. Ashtamoorthy ILR 13 Mad 89 where it has been pointed out that the rights of the jenmi are unaffected by the grant, and that subject to the right of compensation for improvements, he may be evicted by the jenmi.

9. It is contended by the tenant that in all the documents of title there was an assertion made that the tenancy was a permanent one and that the jenmi at the time when he granted the lease must be presumed to have known about it and should have recognised the status of the tenant as a permanent tenant. It is true that there is an assertion in the assignment deeds that the tenancy is a permanent one, but there is nothing in the kanam demise Ext. B4 executed by the Devaswam to Narayana Pattar that such a right had been either recognised

by the Devaswam or known to the Devaswam.

In Ext. B4, after referring to the reclamation effected by the cowledar and the final vesting of that right in the lessee, what is stated is that on payment of an annual rent of 181 paras 2 edangzhis of paddy and the Government revenue the lessee was to continue in possession under the Devaswam. The lessee was given a right to reclaim the land and plant kuzhikoors and put up buildings. There is nothing in the lease deed to indicate that the lease was a permanent one.

Even though no term has been mentioned in the lease, still the onus is on the tenant to prove that it is a permanent tenancy. Mere proof of long occupation is no ground to presume that the tenancy is of a permanent nature. Again even assuming that the previous trustee knew and acquiesced in a permanent tenancy being granted to the second respondent, the appellant in A. S. No. 249/56 who is the present trustee is not bound by the same.

No doubt R. W. 1 the devaswam kariastha had admitted that generally the devaswam does not evict any of its tenants and that on no previous occasion has any of the tenants of Akamalavaram lands been evicted, but that does not constitute an admission of a permanent tenancy in any of the tenants of Akamalavaram lands. The learned Subordinate Judge was therefore perfectly justified in finding that the tenant failed to establish the claim of permanent tenancy in respect of the lands acquired.

10. The learned Subordinate Judge has stated that there is no case for the tenant that he is a cultivating verumpattomdar and that on his own showing the lands were in the actual possession of tenants under him. Pleadings in the case do not support this statement of learned Subordinate Judge. No doubt the finding that he is not a cultivating verumpattomdar has not been challenged in specific terms by the respondent, but we find in paragraph 2 of the judgment that the sum of Rs. 3097-9-2 representing the value of some buildings, canals and standing crops belonging to the tenant was directed to be paid to the tenant by the Land Acquisition Officer with the consent of the jenmi. It cannot, therefore, be stated that the tenant is not in possession of the properties. We have also been referred to a Writ Petition filed by the tenant in respect of the acquisition of these very same properties where he had claimed the same as being in his possession. It cannot, therefore, be seriously contended by the jenmi that the tenant is not in possession.

11. The Devaswam may not be in the habit of evicting its tenants, but under certain conditions Devaswam has the right of evicting the tenant and it is that possibility that has to be taken note of. Devaswam has also got other valuable rights in the land as any other jenmi, being the sole proprietor of the soil. In awarding 3/4th of the compensation amount to the tenant the learned Subordinate Judge has taken into consideration the fact that the entire income of the land was the result of reclamation effected by the tenant.

All these factors had been taken note of and elaborately discussed by the learned

Subordinate Judge and in the circumstances we do not find our way to differ from the conclusions arrived at by him, namely that the value should be apportioned by giving 1/4th to the jenmi and 3/4th to the tenant.

12. The question of apportionment of the amount of solatium is dealt with in para 16 of the judgment and the learned Subordinate Judge has distributed the solatium also in the same proportion in which the respective rights of the parties are valued. His decision finds support in two Bench decisions of this court in 1958 Ker LT 613 and 1958 Ker LT 559 : Raghavan Unni Vs. Athar Rowther and Others, where in dealing with the apportionment of solatium it is stated that the right to the solatium follows the right to the compensation amount and the share of the solatium which the jenmi and the Kanomdar are each entitled to get should be proportionate to the share he gets out of the entire compensation amount, i.e., each of them is entitled to get as solatium" 15 per cent of the compensation amount he is found entitled to.

We are in respectful agreement with this view. This statutory allowance of 15 per cent over and above the market value of the land is given in consideration of the compulsory nature of the acquisition and is intended to compensate the parties for their disinclination to part with their property. It is therefore only reasonable that this amount of solatium should be divided in proportion to their share in the compensation amount. The order of the learned Subordinate Judge therefore requires no modification.

13. Another point that was pressed by the learned counsel for the appellant in A. S. 356/50 is regarding the costs. The learned Subordinate Judge disallowed the costs on the ground that neither side has succeeded in full in the claim put forward and exercising his discretion it was ordered that both parties should bear their respective costs. We do not think that this discretion has not been exercised properly and we do not find any reason to differ from the conclusions of the learned Subordinate Judge. It, therefore, follows that both the appeals must be dismissed.

In the result we confirm the decree of the court below and dismiss both the appeals. Both sides will bear their respective costs in the two appeals.