

(1956) 04 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 220 of 1954

P.V. Narayan Rao

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 27-04-1956

Acts Referred:

Constitution of India, 1950 — Article 226, 81(4)
Government of India Act, 1935 — Section 299
Orissa Estates Abolition Act, 1951 — Section 2, 7, 7(1)

Citation : (1956) 22 CLT 366

Hon'ble Judges : Rao, J; Mohapatra, J

Bench : Division Bench

Advocate : D. Natsu Raju, H.G. Panda and N.V. Ramdas, for the Appellant; A.G. and J.C. Naik, for the Respondent

Final Decision : Dismissed

Judgement

Mohapatra, J.—These are petitions under Article 226 of the Constitution praying for appropriate Writs in the following circumstances:

O.J.C. 220/54: The present Petitioner files this petition on his own behalf and on behalf of his two brothers for whom he holds a power of attorney. The village concerned is of the name Bodamohiri in Kudala Taluk in the district of Ganjam which is also a part of the ex-Athagada zamindary. This village along with several others was not included in the San ad granted to the Zamindar of Athagada in 1804 and the Zamindar of Athagada executed a Kabuliyat excluding all lakhiraj lands. Accordingly 77 jagir villages including village Bodamohiri were excluded from the assets of the Athagada zamindary and only Kattubai due from them was included. In 1854 the zamindary of Athagada was sold for arrears of revenue and eventually was purchased by the Raja of Khallikote. Before the auction sale, the defaulting zamindar of Athagada had however acquired, by purchase or otherwise, 50 out of the said 77 jagir villages, and, even after sale, the Zamindar of Athagada claimed the income of these villages which he had purchased on the

ground that only the right to Kattubadi thereof had passed to the purchaser under the auction sale. The Madras Government held that the 77 jagir villages were reserved at the time of the Permanent Settlement and the 50 villages acquired by the ex-Raja of Athagada did not pass to the auction purchaser. The Government exercised their right of resumption in respect of the said 50 villages and re-granted them to the Raja of Khallikote on payment of an additional revenue of Rs. 5000/-. The rest of the 27 villages however remained with the original grantee and their successors and the present village Bodamohiri is one of the said 27 villages. The Madras Government by their G. O. No. 2298 dated 28th October, 1862 waived their reversionary claim on the ground of expediency and grace and issued distinct instructions to the In am Commissioner not to interfere with the said 27 villages. The present Petitioner's ancestor purchased this village by a registered sale-deed dated 26th February 1887. Under the provisions of the Orissa Estates, Abolition Act, 1951 (Act I of 1952), hereinafter called the Abolition Act, the Government of Orissa issued Notification dated 1st July 1954 vesting the present village in the Government and served notice upon the present Petitioner to deliver possession. The Petitioner, therefore, invokes our jurisdiction under Article 226 of the Constitution to quash the notification vesting the village in the Government and to issue a Writ of Mandamus against the Government not to take delivery of possession on the ground that this is not an "estate" within the meaning of Section 2 of the Abolition Act.

2. The main question is whether this village is an "estate" within the meaning of Section 3(2) of the Madras Estates Land Act, 1908 (hereinafter called the Madras Act) as amended by the Orissa Act No. XVII of 1947. Even though the villages were admittedly described as jagir villages, the learned Advocate-General very fairly conceded that the concerned village was, not an estate within the meaning of Section 3(2)(c) of the Madras Act, but within the meaning of Section 3(2)(d) which runs as follows:

any inam village of which the grant has been made confirmed or recognised 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 a grant a, an inam is expressed, to be of a named village, the area which forms the subject matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service or other tenure or been reserved for communal purposes."

Indeed the present village was not the subject matter of any grant made by the British Government, nor was it confirmed or enfranchised. The only question that was strongly disputed at the Bar, so far as this part of the case is concerned, is whether the Inam grant was recognised by the British Government at any time whatsoever. Mr. Panda, appearing on behalf of the Petitioner, strongly contend, that in order to constitute recognition within the meaning of Section 3(2)(d) at

the Madras Act, mere inaction, acquiescence and sleeping over of the Government for a long period during which the grantees were enjoying the jagir villages are not enough. It must be shown that the Government recognised the grant by some overt act, executive or legislative. The term "recognition" conveys within itself an active element and mere passive inaction in allowing the grantees to enjoy their rights does not amount to recognition. In support of his contention he has however relied upon a decision of the two eminent Judges of the Madras High Court in the case for Secretary of State for India v. Bhanumurthy 24 M.L.J. 538, that mere sufferance by the Government or forbearance home taking steps which in might have been open to the Government to take, or collateral expressions of opinion not intended to be recognition or confirmation of the right of the holder would not amount to a continuance. He also relies upon an observation of Srinivasa Ayyangar J. in the case of Sam v. Ramalinga Mudaliar ILR Mad. 664. The observation runs thus:

It is difficult to assign a precise meaning to the word "recognized" whether mere acquiescence is enough or whether something more is required is not clear. I should be inclined to think that recognition implies something more than mere acquiescence, something done by the Government, as, for instance, by acceptance of service, jodi, etc.

The decision of 24 M.L.J. 538 was thereafter quoted.

3. Mr. Panda, however, is confronted with the order of the Madras Government (G. O. No. 2298 dated 28th October 1862) which is relied upon by both parties before us. While enquiring and deciding on the question of the right of reversion of the Government in respect of these villages, the Government made it clear that they did not press their claim of reversion as a measure of expediency and liberal policy and not from being satisfied of the zamindari right. The Government found in that very order:

Thus in strictness the reversionary right belongs to Government, but practically the zamindars have not been interfered with, and seem to have treated these villages as matter of family arrangement, a privilege to which they attach much importance.

Paragraphs 6 and 7 of the Government Order may be quoted in this connection :

6. Under these circumstances the Government resolved to instruct the item commissioner not to interfere with these villages, and to waive their claim to them on the ground as already stated of expediency and grace. They do of admit the right of the Zamindars, but they will not press their claims hereafter.

7. The Board in paragraphs 20 to 26 of their letter dated 30th May, 1862 reopen the case of the 50 mukhasa villages in the Hatghar Zamindary "on which orders were given in the proceedings dated 21, February, 1860-No. 274. The villages were made over to the purchaser of that Zamindary with the addition of Rs. 5000/- to the peishkash the Government paying a corresponding amount to the

widows of the ex-Zamindar. The Board on the analogy of their re-assessing in the case of the other mukhasa villages the reversionary right to which they deem to belong to the Zamindar, recommend that the addition to the peishkash be remitted retrospectively from the death of the ex-Zamindar."

It is clear to our mind that this order amounts to a distinct recognition of the right of the grantees in respect of jagir villages and they directed the Inam Commissioner not to enquire into the validity of the title of the grants to hold jagir villages. It was not the subject matter of the enquiry for enfranchisement. Apart from this, the position of law pronounced in the aforesaid two decisions relied of on by Mr. Panda have undergone considerable change in the meantime.

8. We will quote, in this connection, a paragraph from Vedantachari's Commentaries of the Madras Estates Land Act, 1908, (1946 Edition) appearing at p. 52:

In regard to certain other enactments the expression used is granted, or continued or annexed by the state See, Section 17, of the Madras Proprietary Estates Village Services Act. It was originally held in Secretary of State v. Bhanumurti 24 M.L.J. 538, that an overt act was necessary to constitute "continuance" by the Government. This view was dissented from in Pitchayya v. Secretary of State AIR 1920 Mad. 478, which held that service inam lands excluded from the settlement must be deemed to have been "continued" by the State. This view was followed in Secy. of State Vs. Sree Rajah Vasireddi Sri Chendra Mouleswara Prasada Bahadur, Zamindar Garu and Others, . It was considered in this case that the passing of the Madras Regulation, XXXI of 1802 and the non-interference were themselves "continuances". It is submitted that the same view should apply even where the word "recognised" is used.

Subsequent to this edition we have before us a High Court in the case of Bhavanarayan v. occurs at p. 426:

It will be noticed that for purposes of the section, recognition of the grant for an entire village Inam stands on the same footing as its confirmation; and there is authority that such recognition could be implied from conduct and even from in-actin. Vide, Ramalinga Mudali and Another Vs. T.S. Ramasami Ayyar, .

9. We should like to refer to another decision of the Madras High Court of Ramesam and Venkatasubba Rao, JJ. in the case of Secretary of State v. Rajah Vasireddi 12 Ramesam J. in his judgment at p. 681 observes:

But I do not see why merely permitting the kamams to continue in enjoyment of the lands does not amount to continuing within the meaning of Section 7.

Apart from the aforesaid decisions on the subject, there is one very important Regulation which served as the basis in some cases to come to the conclusion that the Regulation amounts to recognition of the grants. It is Madras Regulation No. XXXI of 1802. The preamble and Section 2 of the Regulation are as follows:

Preamble-A Regulation for Trying the Validity of the Titles of Persons holding, or claiming to hold, lands attempted from the Payment of Revenue under Grants not being Badsahi or Royal Grants; and for determining the amount of the annual assessment to be imposed on lands so held, which may be adjudged to be, or may become, liable to the payment of public revenue in the British Territories subject to the Presidency of Fort St. George. Passed by the Governor in Council of Fort St. George, on the 13th of July, 1802.

"Section II.-All grants for holding lands exempt from the payment of public revenue in the circars of Chicacole, Rajahmundry, Ellore, Mustaphanagar, and Moortezanagar which shall have been made previously to the 26th day of February, 1768 ; and all such grants as may have been made previously to the 26th day of February, 1768, in the lands commonly called the Company's Jagheer ; and all such lands as may have been made previously to the 12th day of July, 1792, in the Carnatic Payenghautand in Tanjore; and all such as may have been made previously to the 18th day of March, 1792, in the Baramahal, in Salem in Dindigul, and in Malabar; and all such grants as may have been made recent decision 01 the Mantravadi Bhavanarayana and Another Vs. Merugu Venkatadu and Others, . The passage previously to the 4th day of Mav, 1799, in Coimbatoor, Cinara, and Soonda ; and all such grants as may have been made previously to the 12th day of October, 1800, in the districts ceded on that day by the Nizam to the Company, and lying on the south bank of the rivers Kistna and Toombadra, shall be deemed to the valid ; and an persons holding lands exempt from the payment of public revenue previously to the several dates hereinbefore "Specified shall continue to hold such lands without let or molestation j provided that such lands may not have escalated to the state, or may not have been resumed and assessed to the public revenue since the period of those dates respectively and provided also that the present incumbents or their ancestors did obtain and hold actual possession of the said lands previously to the dates hereinbefore specified.

Indeed the present case is not covered by the Madras Regulation No. XXXI of 1802 as the grant was made after 1868.

10. We should close the discussion of this question simply after quoting Rules 1 and 2 under Standing Order No. 52, appearing in Appendix I to Chapter IV, at p. 425 of the Standing Orders of the Board of Revenue, Madras, (1931 Edition):

1. Proved possession as inam for 50 years constitutes a valid title :Land which is proved to have been held uninterruptedly as inam for a period of 50 year, with or without Sanad, will be treated as inam possessed under a valid title, whatever may have been its origin."

2. "Proof to be obtained from the public accounts:-In the absence of a valid grant or other title-deed, entries in the village accounts of the earliest years of the British Administration, in the permanent settlement accounts, in the registers prepared under Regulation, "XXXI of 1802, in the accounts of the earlier surveys,

and in other authentic accounts of older date than 50 years, will be accepted as proof of the existence of the inam for that period. (Since repealed.")

It is clear from these rules that undisturbed enjoyment of 50 years, with or without Sanad, will be treated as an Inam possessed under a valid title whatever may have been its origin. Under these circumstances, therefore, we are definitely of the view that there is no substance in the argument of Mr. Panda that the Inam village was not recognised by the British Government in order to constitute it as an estate within the meaning of Section 3(2)(d) of the Madras Act.

11. Another point has been strongly urged on behalf of the Petitioner placing reliance on the feature that no rules have been prescribed for presenting application u/s 185 (A) of the Madras Act and no Tribunal has been constituted as provided for in the said section the position arises thus. The Madras Legislature in the year 1933 made a serious attempt to bring all Inam villages, irrespective of the fact whether Melwaram alone or Melwaram and Kudi waram together were granted to the Inamdar under the definition of estate with the main purpose of conferring occupancy rights on the tenants in such villages. This was very strongly opposed. Even His Excellency the Governor-General in Council withheld his assent to the Bill; but nevertheless the attempt succeeded and in the Third Amendment of the Madras Estates Land Act of 1936 (Act No. XVIII of 1936) the definition of an "estate" u/s 3(2)(d) was amended. Prior to this Act of 1936 of Madras Legislature) the villages in respect of which the Inamdar had only Melwaram rights were estates within the meaning of the definition ; but the villages in which the Inamdar had Kudiwaram rights also did not satisfy the conditions of the definition standing prior to Madras Act, XVIII of 1936. This difference was obliterated by this Amendment of 1936 and the villages in which the Inamdar had both the rights even were held to be estates within the definition. In addition to this provision regarding Section 3(2)(d) in that very Act) Sections 185A and 185B were also introduced. This was indeed to meet the objection of the original Bill, which attempted to bring all Inam villages to the category of estates) as expropriatory in so far as interests of Kudiwaram rights are concerned. These provisions were made to the effect that on the application of the Inamdar, a Tribunal was to be constituted by the Government which was to declare whether the particular Inamdar had Kudiwaram rights in the village or not; if he had Kudiwaram rights) then provisions were made in Section 185 B that the tenants would have occupancy rights in respect of the land on the landlord receiving rent for one year. These provisions of Act XVIII of 1936 of the Madras Legislature were introduced into the. Mauras Act applicable to the ex-Madras areas in Orissa by Orissa Second Amendment Act of 1946) that is Orissa Act No. XVII of 1947, which came into force on 7th June, 1947. The provisions of the Madras Act and the Orissa Act after 1947 became the same so far as these three sections are concerned, that is, Sections 3(2)(d), 185 A and 185 B. The argument on behalf of (he Petitioner is to the effect that the Orissa Government have not prescribed the Rules for application as provided for u/s 185 A nor have they constituted a Tribunal to inquire and declare the rights of the Inamdars

whether they had Kudiwaram rights or not. It is further contended that these provisions were introduced as the new definition of Section 3(2)(d) of the Madras Act making all Inam villages as estates irrespective of the question whether the Inamdar had merely Melwaram interest or Kudiwaram and Melwaram as well is confiscatory, and as no rules have been prescribed and no Tribunal has been constituted the new amending definition is illegal and void and is therefore to be ignored. We are therefore, as contended by the learned Counsel for the Petitioner, to fall back upon the definition of the word "estate" existing prior to the new amendment of the year 1947, in order to get the definition of the word "estate". The basis of the argument is that the new definition is confiscatory of the Kudiwaram rights of the Inamdars. It is indisputable that the purpose and the effect of the new amendment is only to give more rights to the tenants that is) occupancy right to the tenants. In other words, the provisions were by way of regulating the relationship between landlord and tenant and while making provisions for better rights of the tenants, necessarily the provisions had to curtail the existing rights of the landlord. Such provisions, regulating the relationship between landlord and tenant, in my opinion, cannot be confiscatory. If such provisions be taken to be confiscatory then most of the provisions of the tenancy laws prevailing in all parts of India giving better rights to the tenants than existing at the time of the legislation would be taken as confiscatory. Without discussing the matter any further, we cannot put it in a better way than as has been placed by their Lordships of the Privy Council in the decision of AIR 1946 127 (Privy Council) . This judgment was delivered by Lord Wright confirming the judgment in this Case of the Federal Court of India delivered by one of the most eminent Judges of India, the then Chief Justice, Sir Mawrice Gwyer. To me it appears, the points that arose in that case are parallel to the points raised in the present case. There a talukdar who was a grantee of a Sanad from the Governor-General brought a suit for declaration that the U.P. Tenancy Act 1939 was ultra vires of the Provincial Legislature with respect to certain of its provisions on the ground that the Act created rights and interests in land in favour of other persons contrary to the and granted to him by the Crown and thus derogated from the terms of the Crown grant. It was finally so found by their Lordships of the Privy Council.

It will be enough for our purpose to observe that the rights of the talukdars are affected in any event by this U. P. Act. It was observed by their Lordships of the Privy Council that the Provincial Legislatures were given exclusive powers to make laws with respect to matters of List 2, Item No. 21 of the Govt. of India Act, 1935; and the U.P. Legislature was therefore fully competent to legislate.

On an examination of the provisions of Section 299, G. I. Act, their Lordships pronounced strongly that the prohibition contained in Section 299, Government of India Act, could have no application to the present case where there was no question of, confiscatory legislation. To regulate the relation of landlord and tenant and thereby diminish rights, hitherto exercised by the landlord in connection with his land, is different from compulsory acquisition of land.

Furthermore, the questions involved are questions of legislative competence and not merely of delay or precautionary safeguards. Sri Mawrice Gwyer, C.J. had expressed himself in strong terms:

It must always be remembered that within their own sphere the powers of the Indian Legislature are as large and ample as the Parliament itself.

Their Lordships of the Privy Council further observed "it is many centuries since the Courts were invited to hold that an Act of Parliament was ultra vires or invalid in law on the ground that it infringed the prerogative of the Crown. So startling a claim as that made in the present case cannot be upheld. That broad and general principle is sufficient to dispose of the claim. No Court can annul the enactment of a legislative body acting within the legitimate scope of its sovereign competence." It is clear from these observations therefore that the provincial Legislature, if acting within its competency, Can vary the terms of the grant and give better rights to the tenants by curtailing a portion of the rights of the grantee. We will further quote the observations of their Lordships made in paragraph 19 of the report: support may be found (if support is needed) for the general proposition that the Crown cannot deprive itself of its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which such legislative authority exists". With greatest respect, following this authority we find that the provisions of the amendment of Section 8(2)(d) of the Madras Act are not confiscatory, and as such, they cannot be ignored merely because a Tribunal has not been constituted nor the Rules have been prescribed.

12. The learned Advocate-General contends that even if the provisions be taken to be confiscatory, they cannot be ignored merely because the Executive Government had not constituted a Tribunal. The Act and the impugned amendment became valid as soon as provisions for compensation were made under sections 18-A and 185-B of the Madras Act. The neglect on the part of the executive Government, if any, certainly cannot make a piece of legislation invalid, and the parties affected on account of this neglect may have their remedies in competent Courts of law; but the provisions contained in the amendment cannot be impugned as invalid as the same legislation had made provisions for compensation. In our opinion, there is considerable force in this part of the argument. It is clear on a perusal of the provisions of sections 185-A and 185-B that on the application of the landlords having Kudiwaram rights, the Tribunal constituted by the Government is to inquire and declare such rights and they are to get the compensation of an annual rental. The Abolition Act does make provisions for compensation. The argument on behalf of the Petitioner can at best be made on the point of adequacy or inadequacy of compensation. In the: absence of such a Tribunal, which is no ground to avail, Articles 81(4) of the Constitution is a complete answer.

13. Regarding the lands which are still in Khas possession of the Inamdars, sufficient protection has been given to them under the provisions of Section 7 of

the Abolition Act. Section 7(1) of the Abolition Act relevant for our present purpose is as follows:

7. (1) On and from the date of vesting (a) all lands used for agricultural or horticultural purposes which were in Khas possession of an Intermediary on the date of such vesting.

X X X X

shall, notwithstanding anything contained in this Act, be deemed to be settled by the State Government with such Intermediary and such Intermediary shall be entitled to retain possession thereof and hold them as raiyats under the State Government subject to the payment of such fair and equitable rent as may be determined by the Connector in the prescribed manner.

X X X X

In our view, therefore, the point must tail.

14. O.J.C. 249/55: The Petitioner in this O.J.C. is the Inamdar in respect of village Koniapalli which is one of the aforesaid 27 villages. Here the village vested in the State of Orissa on the basis of the Notification dated 15th July, 1955. As the same points were raised, the same considerations should prevail regarding Village Koniapalli.

15. In this O.J.C., the learned Advocate-General placed strong reliance on the definition of estate in Section 2 of the Abolition Act as amended by Orissa Act, XVII of 1954 widening the scope of the definition to the effect that any Inam village is an estate within the meaning of Section 2(g) of the Abolition Act and we need not go into the provisions of the Madras Act. The legality and the validity of the Abolition Act were questioned by Mr. D. Narsu Raju, the learned Counsel for the Petitioner. As we are dismissing this O.J.C. even according to the narrower definition of the word "estate" in the Abolition Act the legality of which has been finally settled we are not deciding the point in this O.J.C. The point is therefore left open for discussion in other batches of 1955 O.J.C.

16. In conclusion, therefore, the two petitions are dismissed with costs. Hearing-fee and the costs in each case are assessed at Rs. 100/- rupees one hundred).

Rao, J.

17. I agree.

18. Petitions Dismissed.