
(1956) 07 MAD CK 0031

In the Madras High Court

Case No : Writ Appeal No's. 112 and 113 of 1955

Ramanadhan Chettiar

APPELLANT

Vs

State of Madras and others

RESPONDENT

Date of Decision : 11-07-1956

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1958 Mad 104

Hon'ble Judges : Rajamannar, C.J.; Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : V. Vedantachari and A. Kuppuswami, for the Appellant; K.V. Sankaran, for the Respondent

Final Decision : Allowed

Judgement

Rajamannar, C.J.—These two appeals are against the judgment of Rajagopalan, J., disposing of two petitions under Art. 226 of the

Constitution of India, and raise the same point, namely, whether the grant to the appellant's predecessor was of a whole village. There was also

another question whether the grant was of both the melwaram and kudiwaram. That question, however, is covered by a finding of fact that the

grant consisted only of the melwaram. All the three members of the Estates Abolition Tribunal held that the grant was of a whole village. The

appellant sought in the above two petitions to have the order of the Tribunal quashed and also to have the notification issued by the Government

under the Rent Reduction Act in respect of the same village also quashed. Rajagopalan, J., held that it could not be said that there was no evidence

before the Tribunal on which it could come to the conclusion that it came to, namely, that the grant was of a whole village, and that therefore there

was no ground on which the order could be quashed.

2. Mr. V. Vedantachari, learned counsel for the appellant, contended that the order of the Tribunal was vitiated by an error apparent on its face,

namely, that the Tribunal cast the onus on the land-holder, that is, the appellant, to prove that the grant was not of a whole village. He relied

strongly on the recent decision of the Supreme Court in *District Board, Tanjore v. M. K. Noor Mohamed Rowdier*, 1932-2 Mad LJ 586: (AIR

1953 SC 448) (A).

3. The facts necessary to appreciate the contention of the appellant are briefly as follows. The original grant of the village in question is not

available. The only evidence available is the extract from the Inam Fair register relating to this village. That clearly shows that at the time of the inam

settlement there was an extent of ten acres 52 cents in the village which constituted a separate Devadayam service grant. It is common ground that

there is no evidence whatever to show when this grant was made and by whom. The question is whether at the time when the rest of the village

was granted to the appellant's predecessor, the Devadayam grant had already been made. If that be so, then undoubtedly, under Explanation 1 to

S. 3 (2) (d) of the Estates Land Act, the village should be deemed to be an estate notwithstanding that it did not include the lands which had

already been granted. It is equally clear that if there is evidence that the original grant was of the whole village, and that at a subsequent date the

Devadayam minor inam was carved out of the whole village by the original decree, then the village would be an "estate" within the meaning of the

Estates Abolition Act and the Rent Reduction Act. But, as pointed out by the Supreme Court, here is also the other contingency of the original

grantor reserving to himself this extent when he made the grant of the rest of the village to the appellant's predecessor, and then, simultaneously or

at a subsequent date, granting the Devadayam inam. It may be said that this is not very probable. But the fact is that we have no evidence in the

matter. In such a state of paucity of evidence, the case must be decided on the basis of the onus of proof. The Supreme Court has in the clearest

terms laid down that the onus would be on the party putting forward the case that the village is an estate; that is to say, in this case, the onus would

be on the Government and the tenants. Undoubtedly, neither the Government

nor the tenants have adduced evidence to help them discharge the burden of proof which lay on them. The effect of the Supreme Court's decision is, if we may say so with great respect, lucidly explained by Satyanarayana Rao, J., in Singaraju Rama Rao and Others Vs. Nellore Linga Reddy and Others . This ruling has been followed in subsequent decisions of the Andhra High Court. Rajagopalan, J., does refer to the above decision of the Supreme Court but has not discussed the effect of the ruling. The learned Judge says that the question whether in a given case there was evidence to show that Devadayam or service inam grant had been anterior to the grant of a named village must necessarily depend on the evidence available in that case. Undoubtedly so. But, where there is no evidence available - admittedly as in this case - then, the case must be decided on the onus of proof. This has been overlooked by the learned Judge. We hold that the order of the Tribunal is liable to be quashed because of this fundamental error on its face. The appeal is allowed and the order of the Tribunal is hereby quashed. It follows that the notification of the Government under the Rent Reduction Act must also be quashed. The appeal in respect of that notification is also allowed. There will be no order as to costs.