

(1942) 08 MAD CK 0014
In the Madras High Court

Ramaswamy Goundar and Another	APPELLANT
Vs	
Ramaswami Goundar and Others	RESPONDENT

Date of Decision : 19-08-1942

Acts Referred:

Madras Estates Land Act, 1908 — Section 20

Citation : AIR 1943 Mad 59 : (1943) ILR (Mad) 331 : (1942) 55 LW 641 : (1942) 2 MLJ 595

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The appellants are the landholders of the Piranthakam Mitta in the Salem district. They filed the suit out of

which this appeal arises to establish the right which they claim to cultivate the bed of the tank in the Piranthakam village when the tank becomes dry

in the hot weather. The respondents who are ryots deny that the appellants possess this right and their plea has been accepted by the Subordinate

Judge. The appeal is from the decree of the trial Court dismissing the appellants' suit.

2. In 1937 the respondents applied to the Deputy Collector under the provisions of Section 20 of the Madras Estates Land Act, for an order

declaring that they possessed the following rights : (1) to graze their cattle on the land forming the bed of the tank; (2) to cut for the purpose of fuel

shrubs growing there; and (3) to remove silt. They also asked for an order restraining the appellants from cultivating the land. The Deputy Collector

held that the respondents had none of the rights claimed by them, but he accepted their contention that the appellants were not entitled to cultivate

the land, although they did possess the right to use it for grazing.

3. The respondents accepted the order of the Deputy Collector, but the appellants did not and consequently they filed the present suit. In the trial

Court the appellants based their case on two grounds. In the first place they claimed the right to cultivate the land as the owners of the bed of the

tank and in the second place they claimed the right by custom. Section 20 of the Madras Estates Land Act has reference to customary rights and

before the Deputy Collector both sides relied on custom. The Subordinate Judge held that the appellants could not claim the right to cultivate

merely because they were the proprietors of the bed of the tank. In his opinion this right only arises by custom and there was no such custom. The

appellants accept the finding of the Subordinate Judge that they cannot claim the right by virtue of custom, but say that he erred in rejecting their

first plea.

4. The definition of "ryoti land" is given in Section 3 (16) and it is there expressly stated that "ryoti land" does not include beds of tanks. The

amending Act of 1934 in some respects changed the definition of "ryoti land," but in the Act as it originally stood and in the Act as now amended

tank beds are excluded from the definition. The proprietary rights of Zamindars in the bed of the tanks lying within their estates has been

recognised by the Privy Council in two cases. See *Madras Railway Co. v. Zamindar of Carvatenagarum* (1874) 1 I.A. 364. and *Prasad Rao v.*

Secretary of State for India (1917) 33 M.L.J. 144 : L.R. 44 IndAp 166 : ILR 40. Mad. 886 (P.C.). The learned advocate for the respondents has

very properly conceded that the bed of the tank with which the appeal is concerned is vested in the appellants as the landholders. Section 20 of the

Act reads as follows:

20(1) The Collector may, on the application of the landholder or other person interested, decide any question as to whether any land is or is not of

the description mentioned in Sub-clause (a), (b) or (c) of Clause (16) of Section 3, or as to the customary rights in the user of any land which is of

any such description, as existing at the commencement of this Act.

(2) Any person aggrieved by such decision may within a period of one year from the date thereof institute a suit in the Civil Court to establish the

right claimed by him in respect of such land but subject to the result of such suit, if any, the Collector's decision shall be final.

It is Sub-clause (a) of Clause (16) of Section 3 which excludes beds of tanks from the definition of "ryoti land". It will be observed that an

application u/s 20 must be confined to the question whether the land is or is not of the description mentioned in Sub-clause (a), (b) or (c) of Clause

(16) of Section 3 or to a question with regard to customary rights in the user of the land.

5. The Collector's decision on such questions is final, subject to the decision in a suit filed under Sub-section (2). This does not, however, mean

that a landholder is precluded, from filing a suit under the provisions of the CPC to establish a right which does not fall within the contemplation of

Section 20 of the Madras Estates Land Act, and we see no reason why a person who files a suit under Sub-section (2) of Section 20 to challenge

an order passed by the Collector under subsection (1) should not advance a plea that he possesses the right claimed on another ground as well.

Otherwise it would mean that there would have to be two separate suits, which would involve further costs and the waste of public time. The

learned advocate for the respondents did not contest this proposition. He opposed the appeal on the ground that Section 20-A and Section 21

operate to prevent a landholder cultivating the bed of a tank which has become dry.

6. In our opinion neither Section 20-A nor Section 21 has application here. Section 20-A merely says that subject to such rules as the Provincial

Government may prescribe the Collector, on the application of the landholder, a ryot or any other person interested, may declare that land which is

set apart for any of the purposes referred to in sub-clauses (a) and (b) of Clause (16) of Section 3 is no longer required for its original purpose and

by an order in writing may direct that the land be used for another specified communal purpose or if it is not required for a communal purpose that

it be converted into Government ryotwari land or landowner's ryoti land according to whether the reversionary rights vest in the Government or in

the landholder. The section contains a proviso that in the case of tank bed lands the reversionary rights in which vest in the landholder, an order

under Sub-clause (1) of Clause (6) shall be made only with his consent. In this case we are not concerned with land which is no longer required for

its original purpose. The tank is still in existence and there can be no cultivation until the water in it has receded in the hot weather.

7. Section 21 says that a person occupying lands mentioned in sub-clauses (a) and (b) of Clause (16) of Section 3 for a purpose other than that for

which the land is set apart or contrary to the rules framed by the Provincial Government may at any time within thirty years from the

commencement of the occupation be summarily evicted by the Collector in the manner provided by the Madras Land Encroachment Act, 1905,

and any crop, product, construction or thing raised, erected or deposited upon the lands shall be applied to such communal purposes as the

Collector may adjudge.

8. In *The Collector of Trichinopoly v. Lekkamani* (1874) 1 I.A. 282. the Privy Council held that the affirmative words of Section 2 of Madras

Regulation XXV of 1802 did not give new rights to the owners of lands not permanently assessed or take away from them any rights which they

possessed. Its effect was merely to vest in all zamindars an hereditary right at a fixed revenue upon the conclusion of the permanent assessment

with them. Sir Barnes Peacock in delivering the judgment of the Board said:

It is a maxim that affirmative words in a statute without any negative expressed or implied do not take away an existing right (see Coke's Second

Institute, page 200; Dwarris on Statutes, page 637). There are no words declaring that no proprietary right then existed, or should thereafter be

deemed to exist, except in Government, in any lands not permanently settled; and in their Lordships opinion it was not the intention of the

Legislature to pass such an enactment.

When a person owns land, he is entitled to use it for any legitimate purpose and we can find no provision in the Madras Estates Land Act which

deprives the landholder of his right to utilize the bed of the tank vested in him so long as by so doing he does not interfere with the right of others.

We certainly cannot regard Section 21 as intended to derogate from the rights of the landholder in the land.

9. In *Meeralli Ambalam v. Rajah of Ramnad* (1933) 66 M.L.J. 338 : I.L.E. 57 Mad. 593. this Court held that Section 20 of the Madras Estates

Land Act reserved the right of the landholder to assign tank beds for cultivation but that did not mean that tank beds by being so assigned became

converted into ryoti land. That case was concerned with the section before its amendment in 1934. In the section as it originally stood it was stated

that nothing in it should apply to tank beds in an estate or affect the rights of the landholder over them. This statement has been omitted from the

amended section, but the omission does not affect the landholder's rights as a proprietor. Of course, these rights may be affected by custom, but

no custom exists here, In the earlier case of Bolusawmy v. Venkatadri Appa Rao (1917) 47 I.C. 594 this Court also held that in so far as tank

beds are capable of cultivation in the dry season the rights of the landholders over them are not affected by Section 20.

10. Now, let us sum up the position. The proprietary rights of the appellants in the bed of this tank are unaffected by custom. The ryots of the

village have no interest in these lands, apart from the right to use, for the purpose of cultivating their holdings, the water contained on the land. The

proprietary rights of the appellants can only be cut down by a statutory provision expressed in unambiguous language, and there is no such

provision. Therefore they are entitled to cultivate such parts of the bed of the tank as become exposed when the water recedes in the dry season,

provided that the cultivation does not prevent the water spreading when the rains come.

11. The appeal will be allowed with costs here and below.