

(1933) 03 MAD CK 0003
In the Madras High Court

Rudrappa Nayak and Others

APPELLANT

Vs

Dasan and Others

RESPONDENT

Date of Decision : 06-03-1933

Acts Referred:

Citation : AIR 1933 Mad 610 : (1933) 38 LW 83

Hon'ble Judges : Walsh, J

Bench : Division Bench

Judgement

Walsh, J.—The plaintiffs as representing the villagers of Kalingapatti brought a suit for a declaration that the plaint property, Survey No. 225

measuring 96 cents, and Survey No. 1690 measuring 3.83 acres, have been set apart for communal purposes from time immemorial and that the

Secretary of State (defendant 3) had no right to assign portions of the above survey numbers to defendants 1 and 2. These two survey numbers

are both registered as cattle-stand in the re-settlement registers. Both the Courts found, as a matter of fact, that Survey No. 225 is not being used

for this purpose but is used for other purposes and that of the 3 acres 83 cents of which Survey No. 1690 consists, only portions are used as

cattle-stand and that 59 cents assigned in that number are not being so used. The suit was dismissed in the trial Court and the decree was

confirmed in the lower appellate Court. Against this the plaintiffs have preferred this second appeal.

2. The registration of the land as cattle-stand in the settlement registers does not imply any grant: see decision in A. Venkatasami Naidu-Plaintiff

Vs. Agaram Chenga Reddi and Others, and S.A. No. 692 of 1926 of this Court. In the former case Wallace, J., held that

the mere registry of land in a village as a particular kind of poramboke creates no vested right in the villagers to hold it as against Government,

and in S.A. No. 692 of 1926 he held that the mere entry of the field as grazing ground poramboke in the settlement registers which is what the

lower appellate Court relies upon is of course no proof of any dedication. It is not argued before me that any grant or dedication has been proved

in the present case, but it is said that once it has been registered as cattle-stand, Government can only transfer it provided they do not prejudice the

rights of the villagers by diminishing the cattle-stand ground beyond what is required and that there is no finding that the land left was sufficient for

the use of cattle by the villagers. This argument was also raised in S.A. No. 692 of 1926. Wallace, J., there remarks:

It is urged that the only principle which ought to guide Collectors in consenting to a reduction of the area of grazing ground poramboke is the

consideration of whether the extent left still suffices for the village needs; that is generally so and has been recognized as a correct principle by

various Board's proceedings and Government orders: see Ex. 9. But that principle is not embodied in the Board's Standing Orders as a sine qua

non nor is it the only principle to be considered. For example, another principle is also set out in the G.O.'s (to) the general needs of the whole

village. Another principle, one may perhaps add, might be the necessity for raising public revenue, or the advisability of restoring the loss of

revenue which Government has suffered by the decision in 1874 to transfer from patta land to poramboke. All these requirements have to be

considered broadly by the Collector in a case like the present. It might be for example that the question that the Collector has to decide is whether

existing grazing ground should not, to the advantage of the whole village, be converted into tank bed or into house site, even though thereby the

need for grazing ground is unduly curtailed. The revenue officials must be left to their own judgment in such matters and their judgment cannot be

questioned by the civil Courts. We see the undesirable result of the civil Courts' interference in the present case.

3. Collector of Godavari District v. Pedda Rangiah (1908) 4 ML T 440, which is quoted for the appellants, appears to be against them. It was

there held, that according to the Common law of the country the control of the gramanatham vests in the revenue authorities and they are at liberty

to grant portions of it at their discretion to persons who apply for it. In that case the plaintiff sued the Collector on behalf of the Secretary of State

to have the grant set aside and for a declaration that the plaintiff and others were entitled to use the land as a standing place for the village cattle

and for common village purposes and that the Collector had no right to make any grant of the land. The other case quoted, K.R. Ramaswami

Aiyar and Others Vs. The Secretary of State for India and Others, , so far as the point decided there is concerned, does not help the appellants.

There the land was described in the settlement register as Mandai poramboke but the Government subsequently transferred it to Natham

poramboke and the suit plot was allotted by the Government as house sites and granted to certain residents of the village. In that case it was not

proved that the remaining area was not sufficient having regard to the needs of the community. It was held that the plaintiffs' customary right was

not an absolute one and the Court could restrict the user to the remaining portions of the land. The result was the dismissal of the suit. This decision

which was by a single Judge, Venkatasubba Rao, J., is however relied on as indicating the principle that Courts can decide what is the reasonable

amount of land to be left for the purpose required. This is an obiter dictum and with great respect I am unable to see how such a principle is

reconcilable with the direction of the Government in the matter. The Privy Council case quoted in that connexion, Bholanath Nundi v. Midnapore

Zamindari Co. (1904) 31 Cal 503, was not a case wherein Government was concerned; the plaintiffs, being resident cultivators of the village

belonging to the defendants, the proprietors of an indigo concern, claimed a right of free pasturage over the waste lands of the village. With respect

I prefer to follow the opinion of Wallace, J., in S.A. No. 692 of 1926 and I am bound to do so as the case before him was decided on the actual

point. In the result the second appeal fails and is dismissed with costs (one set).