
(1958) 03 MAD CK 0001
In the Madras High Court

S. Gopalan

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 20-03-1958

Acts Referred:

Constitution of India, 1950 — Article 265, 372(1)

Citation : AIR 1958 Mad 539 : (1958) ILR (Mad) 798 : (1958) 71 LW 672 :
(1958) 2 MLJ 117

Hon'ble Judges : Ramachandra Ayyar, J; Ramachandra Aiyar, J

Bench : Division Bench

Judgement

Ramachandra Ayyar, J.—This is a case withdrawn by this Court under Article 228 of the Constitution from the file of the District Munsif's

Court, Karur, where it was registered as O.S. No. 267 of 1956 as it involved a substantial question of law as to the interpretation of Article 265 of

the Constitution the determination of which is necessary for the disposal of the suit.

2. The petitioner is a ryotwari pattadar of certain wet and dry lands covered by patta Nos. 96 and 623 in Krishnarayapuram village, Kulitalai taluk,

Tiruchira-palli district. He filed O.S. No. 267 of 1956 in the Court of District Munsif, Karur, against the State of Madras represented by the

Collector of Tiruchirapalli, the respondent herein, praying for the recovery of a sum of Rs. 24-12-0 collected from him as land revenue fox fasli

1365, as such levy and collection of the tax was illegal and unconstitutional by reason of Article 265 of the Constitution of India which provides

that no tax shall be levied except by authority of law. The petitioner claimed that the respondent had no statutory right to levy and collect

assessment on ryotwari lands and as such the collection of land revenue was

contrary to Article 265 of the Constitution. The respondent justified the right to collect the land revenue and contended that Article 265 was not contravened. The question for determination is, therefore, whether the levy and collection of land revenue in respect of ryotwari lands is illegal and unconstitutional by reason of Article 265 of the Constitution. Article 265 of the Constitution provides

No tax shall be levied or collected except by authority of law

3. Before proceeding further it is necessary to set out the main features of the ryotwari system of land tenure and the basis of assessment on the

lands. It is well-known that the system of permanent settlement of Lord Cornwallis was introduced only in a few places in the old Madras

Presidency and that the Board of Directors of the East India Company prohibited its extension to the rest of the presidency* Thereafter collection

of revenue was by way of village settlement or by granting lease of the whole villages to a middleman that is to a rentor or headman or to a joint

body of inhabitants. That system of collection of land revenue was not found satisfactory and the ryotwari system of Sir Thomas Munroe was

adopted between 1812 and 1818. It was conceived as a system of land revenue administration without the middleman, the ryots being treated as

proprietors of their holdings and liable to pay assessment direct to the Government. The assessment however, was not fixed either in regard to the

land or in regard to the period. Arable lands were classified according to the nature of the soil and assessment was fixed according to the quality

and extent of the land. Each field or holding was valued separately and the holder was free to pay the revenue and keep the field or free himself by

giving it up as he pleased. (Baden Powell's Land Systems in British India, Volume III, page 5). Settlements of revenue are made for such periods

as the Government fixed for each district and they are notified in the District Gazette by the Collector. Ordinarily they are being made once in thirty

years. The Standing Orders of the Board of Revenue contain the basis, rates and methods of assessment. Standing Order 1, Rule 3 states that the

assessment fixed represents the commuted value of the Government's share of the surface cultivation. The State Government will fix the period of

settlement and during the currency of the period no revision of assessment is possible. Baden Powell in his work Land Systems in British India,,

Volume III, at pages 106 to 107 says:

Though the zamindari system was introduced by Regulation XXV of 1802 no general Revenue: Act exists ; nor has the ryotwari system ever been

established by legislative enactment. Really the StandingOrdersof the Board are the land Revenue Code of this province and no one can thoroughly

master the revenue administration without studying these in detail.

4. The assessment of land revenue by periodical settlements contemplated by the Board's Standing Orders is thus a part of the system on which

the ryotwari pattadar was allowed to have the land.

5. From very early times land revenue was the most recognised item of revenue for the State. Mr. Soundararaja Iyengar in his book ""Land Tenures

in Madras Presidency"" points out at page 11, after referring to the ancient Hindu Scriptures and Smrithis, that the ancient lawgivers have laid down

most distinctly that the sovereign is entitled to a share of the produce on the land for protecting the life, the liberty and the property of the people

under his charge. Reference has also been made by the learned author at page 151 of his work that according to the Tamil classics land revenue

amounting to 1/6th or a sixth of the produce was levied by the king payable either in money or in kind at the option of the farmer. There has been a

controversy as to whether the land revenue collected by the State was in the nature of rent or tax. For the purpose of the present case it is

unnecessary to go into that question as the learned Advocate-General who represented the State invited us to proceed on the footing of its being a

tax.

6. In all countries it has long been recognised that the Sovereign is entitled to-levy tax on all lands within its territory. Such a right is one of the

prerogatives, of the sovereign. That was also the position in England till conflict arose between the king and the people and till it was put an end to

by the Bill of Rights William and Mary, Section II, Chapter II. In Attorney-General v. Vilts United Dairies 37 ITR 884 : 91 L.J.K. 897, Lord

Justice Atkin (as he then was) stated:

No power to make a charge upon a subject for the use of the Crown could arise except by virtue, of the prerogative or by statute and the alleged

right under the prerogative was disposed of finally by the Bill of Rights. Though the attention of our ancestors was directed especially to abuses of

the prerogative there can be no doubt that this statute declares the law that no money shall be levied for or to the use of the Crown except by grant

of Parliament. We know how strictly Parliament has, maintained this right and in particular how jealously the House of Commons has asserted its

predominance in the power of raising money. An elaborate custom of Parliament has prevailed by which money for the service of the Crown is

only granted at the request of the Crown made by a reasonable Minister and assented to by a resolution of the House in Committee. By

Constitutional, usages no money proposal can be altered by the second chamber, whose powers are confined to acceptance or rejection. Similar

elaborate checks exist in respect to authority for expenditure of the Public revenue, both in respect to obtaining the statutory authority to expend

money and to obtaining the executive acts necessary to place the money at the disposal of the spending authority.

7. It will thus be seen that it was as a result of the Bill of Rights that the sovereign in England lost his prerogative right to levy a tax and that after the

Bill of Rights, taxation could be effected by a statute of Parliament.

8. But in India the prerogative right to tax was recognised in the Ruler and there has been no abrogation of such a right as in England. In *Major C.*

Bell, R.A., Superintendent Gun Carriage Factory Vs. The Municipal Commissioners for the City of Madras, , Bashyam Iyengar, J., observed :

On the other hand it is probably true that the Crown has according to the Common Law of India certain prerogatives which it may exercise in

India though not in England, notably the prerogative of imposing by an executive act assessment on lands and varying the same from time to time

9. To the same effect is the observation of Subramanya. Iyer, J., in *Madathapu Ramayya v. Secretary of State for India* in Council I.L.R.(1903)

Mad. 386 , which is in these terms:

Such imposition in the due exercise of the prerogative possessed in this country by the Crown, viz., that of exacting from a subject holding arable

land, the Crown's proper share of the produce thereof or the equivalent of such produce, which is the modern land revenue. At page 396,

Bashyam. Iyengar, J., observed :

The right of the Government to assess land to land revenue and to vary such assessment from, time to time is not...a right created or conferred by

any statute but as stated in my judgment in *Major C. Bell, R.A., Superintendent Gun Carriage Factory Vs. The Municipal Commissioners for the*

City of Madras, it is a prerogative of the Crown according to the ancient and Common Law of India. The prerogative right consists in this, that

the Crown can by an executive act determine and fix the *Rajabhogam* to the King's share in the produce of the land and vary such share from time

to time.

10. That taxation is one of the prerogatives of the sovereign in this country has been further stated in a decision in *Echikan Charakare Kelu Nair*

Vs. The Secretary of State for India in Council, . It was held in that case that the proprietorship of the ryotwari holder in his holding was subject to

the prerogative which the Crown has according to the Common Law of India of imposing by an executive act assessment on land and varying, it

from time to time.

11. There are therefore two aspects of the matter: (1) it is an inherent feature of the ryotwari system that the Government has a share, and as stated

in Board's Standing Order 1, Rule 4, the assessment represents the commuted value of the Government's share of the cultivation and (2) the

assessment is by virtue of the prerogative right of the Government which under the law obtaining in this country it always possessed. Such being the

legal basis for the assessment, the procedure adopted for the levy is what is contained in the Board's Standing Orders. In 21 CWN 1089 (Privy

Council) , the Privy Council recognised that the incidents of the ryotwari tenure are governed by custom and at page 897 observed:

The practice of the Government estates is to make periodical settlement with ryots whereby the Government's share in the produce is commuted

for a fixed annual payment in assessing which the wet lands are separately classified. The annual payment is incapable of increase during the

period for which settlement is made.

12. There has been statutory recognition of the incidents of the tenure, of the right of the Government to levy and collect the assessment. Regulation

XXIII of 1802 provided for the establishment in each district of an office for keeping the records in the "native" language relating to public revenue

and for preserving the same. The Preamble to that Regulation emphasised the necessity to preserve records relating to assessment of revenue and

of Public demands. The Revenue Recovery Act II of 1864 which purported to consolidate the laws for the recovery of arrears of revenue in India

put the collection of revenue on a statutory basis. u/s 1 of the Act the landholder is defined as including all holders of land under ryotwari settlement

or in any way subject to the payment of revenue direct to State Government. Section 3 of the Act enacts:

Every landholder shall pay to the Collector, or other Officer empowered by him to receive it, the revenue due upon his land on or before the day

on which it falls due, according to the kistbandi or other engagement, and where no particular day is fixed, then within the time when the payment

falls due according to legal usage; provided that except where property is held under a Sanad-i-Milkiyat-i-istimrar or other similar instrument it

shall be lawful for the Board of Revenue, by notification published in the District Gazette, to alter and fix, from time to time, the amount; of the

several kists or instalments, and the dates at which they shall respectively become payable.

13. This provision is a charging Section as it imposes a liability on the landholder to pay the assessment. Consistent with the nature and incidents of

the tenure the Section recognised the right of the Board of Revenue to alter and fix from time to time the kists. The Act contains elaborate

provisions for the collection of arrears of revenue. Section 58 like the provisions of Statute 2r, Geo. III, Chapter 70 (refer A d to in Ilbert's

Government of India, page 268) is a reminder of the origin of the land revenue assessment as a prerogative right and precludes the Civil Court

from taking cognizance of any dispute as to the rate of land revenue.

14. There have been a number of other statutes in Madras which recognised the ryotwari assessment. Act XIV of 1920 (Madras Local Boards

Act) provides u/s 79(1) for the annual rental value of property to be calculated on the basis of the assessment. Madras Act XXVI of 1948

provides u/s 22 for ryotwari settlement of the estate taken over by the Government on the basis of the ryotwari settlements. Madras Act XXIV of

1954 and Act XXX of 1955 provide for the levy of surcharge on the basis of land revenue.

15. Under Article 266 of the Constitution all revenue received by the State Government from part of the consolidated fund and monies out of this

fund could be appropriated in the manner provided in the Constitution. Article 202 provides for laying before the houses of Legislature a statement of estimated receipts and expenditure for the state for every financial year. Article 203 provides for the demands for grants and Article 204 provides for the passing of an Appropriation Act in respect of the grants made and the amounts charged on the consolidated fund. Land revenue to be collected would form part of the estimated receipts under Article 202 and grants would be made for the excess over the receipts and the Appropriation Act would put the grants on a statutory basis. The collection of ryotwari assessment is thus brought before the Legislature every year.

16. In *China Navigation Company v. Attorney-General* L.R. (1932) 2 K.B. 197 the question arose as to whether the Crown in England was bound to afford military assistance to British subjects in foreign countries. The plaintiffs were a shipping company trading particularly in Chinese and neighbouring waters, where their ships carried a large quantity of valuable cargo and numerous passengers. At all material times the Chinese and neighbouring waters were infected with pirates. The plaintiff company requested the Crown to provide armed guards for their ships for protection against piracy. Armed guards were provided for a time but later the Crown claimed that the supply of armed guards would be continued only on condition that the cost was paid by the shipping company. The plaintiff company paid the sums demanded but later contended that the Crown was not entitled without the sanction of Parliament to demand payment of the cost of such measures as providing armed guards, and that they were under no obligation to make the payment for the use of the Crown without statutory or other authority. They brought an action praying for a declaration to that effect. The Court of appeal held that there is no legal duty on the Crown to afford protection to British subjects in foreign parts and that excepting so far as they are regulated by statute matters relating to the army remain within the prerogative of the Crown which could not be interfered with by the Courts and if in the exercise of such prerogative the Crown agrees to afford military assistance on payment such stipulation is perfectly valid. In regard to receipt of such monies by the Crown without there being a lawful parliamentary enactment, *Scrutton, L.J.*,

observed at page 217 thus:

The financial side of the matter, the question of imposing a charge on subjects without the consent of Parliament, is illuminated by two memoranda

from the Treasury produced to us during the second hearing. The first sets out the way in which receipts for services rendered by the army and

navy have been dealt with during the last one hundred and twenty years. After much discussion the system was put on a statutory footing by the

Public Accounts and Charges Act, 1891. Section 2 deals with all such receipts as appropriations in aid, under the direction of the Treasury of

money provided by Parliament for any purpose and as such they are so applied and audited and dealt with. The suggestion that such receipts are

not authorised by Parliament disappears. The second memorandum shows in detail in the case of a payment by the present appellant company for

services similar to those the subject of the present appeal, the progress of the particular payment through the various revenue authorities, till at last

it is sanctioned as an appropriation in aid under the head "" Miscellaneous Receipts "" by the Appropriation Act for the year, and this is devoted to

the relief of the sum voted by Parliament.

17. I am therefore of opinion that the payment where made, is sanctioned and controlled by Parliament in the Appropriation Act under the system

of appropriation in aid under the Act of 1891. Lawrence, L.J. refers to the receipt of monies in such cases and states that all receipts in respect of

the army have to be applied as an appropriation in aid of the money provided by Parliament for that service u/s 2 of the Public Accounts and

Charges Act, 1891, and have therefore to be brought in the army estimates. In practice the Army Council submits its estimates to the Treasury

which critically examines them and after approval by the Treasury the estimates are submitted to Parliament and may be discussed in Parliament

before the granting of supply and the passing of the Appropriation Act. His Lordship observes at page 235 thus:

The sums paid by the plaintiff company for the provision of armed guards on its ship were included in the estimates for the years in which they were

received as an appropriation in aid, and were duly granted by Parliament as part of the supply for the army for that year; they were subsequently

passed as proper receipts by the Comptroller and Auditor-General. In the face of

these facts it is difficult to see how the contention that the Crown has levied money for its use without grant of Parliament, contrary to the Bill of Rights can successfully be maintained.

Slessor, L.J., observed at page 240 in these terms:

Parliament on being shown that the Department requires to spend a certain sum, but that receipts from fees, etc., will amount to a smaller sum, grants the difference, together with authority to use the sum received from the fees, and therefore the Department is limited to the gross expenditure from the sum granted and the fees, and is financially in exactly the same position as if it had asked Parliament for the whole sum and paid the fees into the Exchequer.

18. It can therefore be said that the levy of assessment on lands has been made by sanction of the Legislature and statutorily affirmed by the

Appropriation Acts. Thus, though in origin the assessment was on the basis of a prerogative right it was recognised as lawful by custom and

statutes, the assessment procedure was codified, as it were, in the Boards Standing Orders, and there was, therefore, a valid legal sanction prior to

the Constitution for the levy, assessment and recovery of land revenue.

19. Explanation (1), Article 372(1) of the Constitution makes it clear that the law in force referred to in the Article is Common Law as well as

statute law. Therefore unless there is some provision in the Constitution which makes ryotwari assessment illegal, the law that previously existed in

regard to it will continue to be valid even after the Constitution. The only other relevant Article is 265 which provides "" No tax shall be levied or

collected except by authority of law"". If the phrase ""authority of law"" is taken to mean statute law Article 372 will not continue the old system of the

levy of land revenue which though legal was not authorised by any statute. If on the other hand the words ""authority of law"" includes Common Law

as well, the system of land revenue assessment obtaining in this State would continue to be a valid law. In the Constitution the word ""law"" has been

used simply or in phrases such as ""according to law"", ""by authority of law"" ""by any law"", ""in accordance with law"", ""in accordance with the

provisions of any law"" ""by or under law"", ""under the law"", ""under any law"", etc. In the absence of any express definition the context determines

whether ""law"" connotes, only statute law or something wider. Article 22(4)(b)

which contains the words, "in accordance with law" obviously contemplates statute law because it is followed by the words "made by Parliament". Article 26(d) which uses the same phrase "in accordance with law" has been held to mean common law. Vide *Sirur Mutt Case*¹. The expression "authority of law" is found in two Articles, viz., 31 (1) and 265.

In Article 31(1) "law" obviously means statute law as indicated by clauses (3) and (4) of that Article. As regards Article 265 it is clear that the reference is not to statute law alone. As stated already land revenue is one of the most important items of revenue for a State, and the makers of our Constitution who should certainly be presumed to have an intimate knowledge of the system and of its basis on the sovereign prerogative, would have hardly contemplated that the validity of the system should be nullified by restricting the scope of the word "law", in Article 265 to mean only statute law.

20. In *P. J. Joseph v. Assistant Excise Commissioner* AIR 1953 Trav. Co. 146, it has been held that the word law in Article 265 is statute law.

This decision has been followed in *State and Another Vs. Beejal*, . The basis of the decision of the Travancore-Cochin High Court is the decision

in *Attorney-General v. Willes*² *United Dairies Ltd. (1922) 91 L.J. (K.B.) 897*. As pointed out already that decision was rendered as a result of

the peculiar constitutional position in England as a result of the passing of the Bill of Rights which put an end to the prerogative of the Crown. As

such this decision cannot possibly apply to India where the prerogative right included the right to levy assessment on land.

21. We are, therefore, of opinion that the levy, assessment and collection of land revenue are "not rendered illegal by reason of Article 265 as such

levy, assessment and collection were valid prior to the Constitution and they are continued by the force of Article 372.

22. Even if a different interpretation is to be given to Article 265, we would hold that the Revenue Recovery Act II of 1864 furnishes the necessary

statutory authority. u/s 3 of the Act the landholder (ryotwari pattadar) is liable to pay the revenue due upon his land. It is further provided in the

Section that the Board of Revenue can by notification published in the District Gazette alter and fix from time to time the amount of the several kists

or instalments and the dates at which they shall respectively become payable.

Further provisions in the Act relate to the mode of recovery of arrears. Thus the liability and the mode of collection are provided in the Act itself while the actual assessment with respect to the lands is left to the periodical settlements by the Government.

23. In *Whitney v. Commissioner of Inland Revenue* L.R. (1926) A.C. 37, Lord Dunedin observed:

Now there are three stages in the imposition of a tax; there is the declaration of liability that is the part of the statute which determines what persons in respect of what property are liable. Next there is the assessment. Liability does not depend on assessment. That *ex hypothesi* has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.

24. The 1st and 3rd stages in the above analysis are provided for in the Revenue Recovery Act. The 2nd stage i.e., the actual assessment and rates

of tax are u/s 3 of the Act provided to be fixed by the Board of Revenue. That is a matter of detail which the Legislature in its wisdom has chosen

to delegate to the executive. The liability to pay the tax is by virtue of the charging Section 3 of the Act. In the words of Sargent L.J., quoted in

W.M. Cockerline & Co. v. Commissioner of Inland Revenue (1926) 16 Tax. Cas. 1, the liability is imposed by the charging Section viz., Section

38 of the English Act. the words of which are clear. The subsequent provisions as to assessment and so on are machinery only. They enable the

liability to be quantified and when quantified to be enforced against the subject, but the liability is definitely and finally settled by the charging Section

and all the materials for ascertaining it are available immediately. In ryotwari settlement the machinery for assessment is the Revenue Board's

Standing Orders and Section 3 of the Revenue Recovery Act recognises it. The delegation of actual assessment to the Board of Revenue is

consistent with the nature and history of the ryotwari tenure. In *V.M. Syed Mohamed and Co. and Another Vs. The State of Madras and*

Another, it has been held that it is open to the Legislature to delegate the power of actual fixing of assessment to a subordinate authority. But the

Rules as to assessment under the provisions of Section 3(4) of the Madras General Sales Tax Act were to be placed before the Legislature and

they were to come into force only after they were approved by a resolution of the House. As pointed out already the levy of ryotwari assessment

may be deemed to be placed before the Legislature annulrv under Article 203 of the Constitution, and applying the princinle of China Navigation

Company, Ltd. v. Attorney-General L.R. (1932) 2 K.B. 197, the actual rate of assement should be deemed to have been approved by the

Legislature.

25. In Sutherland's ""Statutes and Statutory Construction, volume, 1,1943 edition Article 318 (stating the American Law) is in these terms:

The delegation of rate-making authority to railroad and public service commissions has been. uniformly sustained. Courts have frequently observed

that the task of rate-making require expertness, technical skill and constant atteUonand thatit was obvious that Legislative were unable to discharge

this obligation directly. In all these cases, however, the legislative principle was clearly understood, it frequently being a statutory adoption of

Common Law standars. For this reason, perhaps Courts have not hesitated to sustain delegation couched in suchgeneralTerms Is fix resonalble

rates or prevent unfair discrimination. The use of delegated power in related fields of monopoly, control and businesses affected with a public

interest have been sustained by the Courts

It has been customary in all these cases to make the delegation in general terms Yet almost without exception the delegations have been held valid.

This unanimity of decision may be expertness by the character of the subject matter reprinted. On the other hand the decisions may be explained

by the Common Law origins of the principle of regulation, by the historical experience with standards in this field, by the Court's own knowledge

of the legislative principle The decisions suggest that if the legislative standard although expressed in genlral language implies a determinate guide for

legislative action the delegation is valid It is obvious that standards seem more certain guide for regulation where there has been prior experience

than in new and experimental fields. Logically however, the issue of power should not be determined by the antiquity of the regulation.

26. Those observations are apposite to the present case.

27. We are, therefore, of opinion that all the three stages of a valid taxation laid down in Whitney v. Commissioner of Inland Revenue L.R. (1926)

A.C. 37, in regard to the levy as assessment and collection of land revenue have statutory authority by reason of the Revenue Recovery Act II of

1864. We answer the "question referred by holding that the levy and collection of land revenue is legal under Article 265 of the Comtitution.