
(1959) 12 MAD CK 0032
In the Madras High Court

Sellappa Goundan and Others

APPELLANT

Vs

A. Bhaskaran and Others

RESPONDENT

Date of Decision : 17-12-1959

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(2)(d)

Citation : (1960) ILR (Mad) 796 : (1960) 73 LW 351 : (1960) 2 MLJ 363

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

Bench : Division Bench

Judgement

Ramachandra Iyer, J.—This appeal arises out of an order passed by the Estates Abolition Tribunal, Vellore, in O.A. No. 18 of 1958, declaring that the inam village of Komarapalayam in Tiruchengode Taluk of Salem District is not an estate within the meaning of Section 3(2)(d) of the Madras Estates Land Act, 1908.

2. The appellants claim to be ryots in the village. Alleging that they were only holding under a lease which had expired, the inamdars filed O.S. No. 62 of 1955 in the District Munsif's Court, Sankari at Salem, for eviction and allied reliefs.. The appellants resisted the claim of the inamdars pleading that they were entitled to occupancy rights in the lands as the village of Komarapalayam was an estate, and that the lands held by them were ryoti. While the suit was pending, respondents 1 and 2, two out of five co-sharer inamdars of the village, filed an application u/s 3(1) of Madras Act XXX of 1956 before the-Estates Abolition Tribunal, Vellore, for a declaration that Komarapalayam village was not an estate as defined by Section 3(2) of Madras Act I of 1908. The appellants, however, were not made parties to the application, the 1st respondent herein, the State of Madras, being the only party. The Tribunal accepted the claim of the inamdars, and granted the declaration sought. Aggrieved by the declaration granted by the Tribunal, the appellants have filed the present appeal, purporting to do so u/s 7 of Madras Act XXX of 1956.

3. At the hearing of the appeal, the learned Counsel for the respondents took a preliminary objection to the maintainability of the appeal. It was contended that

the appellants who were not parties to the proceedings before the Tribunal, could not now challenge the decision. Reliance was placed on the provisions of Section 6 to show that the appellants could, if they so chose, have appeared and put forward their case before the Tribunal, and that not having availed themselves of that opportunity, they should be held to be precluded from impugning the decision.

4. A right to appeal is a creature of statute. If under the provisions of a statute a person has a right to appeal, that right could not be denied to him for the reason that he might or could have put forward his case before the Tribunal in the first instance. Section 7 of the Act which provides for an appeal against the decision of the Tribunal states:

7 (1) Against any such decision of the Tribunal, the State Government, within six months from the date of the decision, and any person aggrieved by such decision within two months from the said date, may appeal to a Special Appellate Tribunal, consisting of two Judges of the High Court nominated from time to time by the Chief Justice in that behalf, provided that the Special Appellate Tribunal may, in its discretion, allow further time not exceeding three months for the filing of such appeal.

(2)...

(3) Subject to the decision on such appeal, the decision of the Tribunal shall be final and shall not be liable to be questioned in any Court of law.

(4) Every decision of the Special Appellate Tribunal and subject to such decision, every decision of the Tribunal shall be binding on all persons claiming an interest in any land in the non-ryotwari area. Concerned notwithstanding that any such person has not preferred any application or filed any statement or adduced any evidence or appealed or participated in the proceedings before the Tribunal or the Special Appellate Tribunal, as the case may be.

Sections 10 and 11 of Act XXX of 1956 vest the Tribunal with exclusive jurisdiction to decide the question, whether the non-ryotwari area is or is not an estate. Section 7(4) makes an adjudication by the Special Appellate Tribunal, binding on all persons claiming an interest in any land in the non-ryotwari area concerned, notwithstanding that any such person was not a party to the proceedings before the Tribunal. In a case where there is no appeal to the Special Appellate Tribunal, the decision of the Tribunal itself would have a similar effect. Having regard to the finality attached to the decision of the Tribunal u/s 7(3) and (4)* it is but appropriate that persons whose interests would be affected by the decision of the Tribunal should be given an opportunity to put forward their case. Sections 6 and 7 make provision for the purpose : (1) u/s 6 it would be open to a party interested to appear and put forward his case before the Tribunal. The provision as to notice in that section is intended to apprise him of the proceedings pending before the Tribunal to enable him, to safeguard his interests. If a person impleads himself as a party before the Tribunal, he would

under the general law be entitled to appeal against any order in respect of which he might have a grievance. a) In addition, a person affected by the order might also appeal. Section 7 confers a right of appeal on every person that may feel aggrieved by the order of the Tribunal (subject to the period of limitation prescribed by the section). For the purpose of Section 7, a person aggrieved would be one who has suffered a legal grievance by reason of the order and would comprehend a wider category of persons than those who were parties before the Tribunal. A person whose right or title would be affected by the decision of the Tribunal would be a person aggrieved. In the present case, the appellants are in possession of certain lands in the village claiming occupancy rights therein on the ground that the village of Komarapalayam is an estate. Their rights would obviously be affected by an adjudication u/s 3(6) of the Act. It would, therefore, follow:-that they would be persons aggrieved within the meaning of Section 7(1) and would be entitled to file an appeal against the order of the Tribunal, notwithstanding the fact that they were riot parties before the Tribunal. We overrule the preliminary objection.

5. On the merits the question to be decided is, whether the village of Komarapalayam is an estate, as defined by Section 3(2)(d) of Madras Act I of 1908. The appellants' case is that it is a whole inam village which would be an estate. On the other hand, the inamdars' claim is that the village is only a part of a village granted in the year 1760 and would not, therefore, by itself be an inam village.

6. Section 3(2)(d) of Madras Act I of 1908 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)...

Explanation (a)...

Explanation (3). Where a portion of an inam village is resumed by the Government, such portion shall cease to be part of the estate, but the rest of the village shall be deemed to be an inam village for the purposes of this sub-clause. If the portion so resumed or any part thereof is subsequently regranted by the Government as an inam, such portion or part, shall from the date of such regrant be regarded as forming part of the inam village for the purposes of this subclause.

Whether Komarapalayam village was an inam village or not would depend on the terms of the grant. The grant, however, is not in evidence. The copper plate grant which was produced at the time of the inam settlement proceedings is not now available. What we have is only Exhibit A-i the extract from the Fair Inam Register relating to the village. From Exhibit A-i it appears that in the year 1760, Krishna Raja Wadiyar, the Rajah of Mysore, granted the village of Jagadapady or

Nattapatti, together with 12 hamlets, to certain Brahmins. Komarapalayam was one of the 12 hamlets. The grant, however, was not by way of gift of either the land or any portion of the assessment thereon. A number of Brahmin, subscribed and collected a sum of 50,000 " Rajagopala pagodas". Four of them, who represented the others as well paid the amount into the treasury and obtained a grant of Jagadapady and the 12 hamlets rent free from the Ruler. Presumably, the grant was the result of the consideration paid by the grantees and was not really attributable to any benefaction by the Ruler. When Tippu Sultan came to power, he resumed six of the 12 hamlets, allowing the successors of the original grantees to remain in possession of the rest without any obligation to pay rent on that portion of the village. On the assumption of sovereignty by the British, Captain Macleod confirmed the title on the successors of the grantees in regard to the lands in their possession. During the enquiry by the Inam Commission, it was found that the inam was enjoyed in no vrittis; however only persons owning 90 vrittis appeared and filed the statements, and there was no claim for about 20 vrittis. The Inam Commissioner confirmed the inam, subject to an assessment of Rs. 566-11-3 in addition to the quit rent of Rs. 299-12-0. There is no evidence to indicate as to what happened to that portion of the grant which was taken over by Tippu Sultan.

7. Column 11 of the Inam Register Extract, describing the history of the grant, states:

This was originally a sarva Agrahar obtained by four Brahmins from in Vikrama... for 50,000 Rajagopala pagodas. Copper plates sanad is produced. Though four Brahmins purchased it the amount of sale was paid by subscription from a community of Brahmins who all divided the village according to their shares. It consisted according to the grantee of the kasba Jagadapady (or Nattapatti as is now called) and 12 hamlets. In Tippu's days, 6 of the hamlets were resumed and the remaining mostly was confirmed under the name of Ardhamanyam village. At the assumption of the company by the British, the Agraharamdars enjoyed the agrahar in 110 vrittis. In fasli 1205 two vrittis were zufted and some lands were also zufted as existing value of the moiety of the original grant. In fasli 1209 a fresh assumption took place and Captain Macleod confirmed as inam, Kasba Nattapatti, (2) hamlet Kuppandapalayam, (3) hamlet Komarapalayam, (4) Kujlanayakampalayam, (5) Pudupalayam and (6) Chinnayyanayakampalayam. These 6 villages are enjoyed by the Agrahardars in 107-1/16 vrittis.

Column 12 states:

Venkatramanyangar and Sesha Bhattafon consideration of 50,000 Rajagopala pagodas paid into the treasury. The grant comprised Jagadapady and 14 hamlets. The hariz of the village was stated at 5,000 pagodas a year, secondly a jari patta of Captain Macleod dated 24th June, 1801, in the name of the Agrahar community in 107-1/16 vrithis. It delands " the fields belonging to jari agrahar

8. Column 21 states:

The entire village is confirmed in one title-deed and enfranchised at the uniform rates of it and for all shares. Total quit rent Rs. 369, the Government reversionary right being thus commuted. The Agrahardars will themselves arrange all the shares of absentees and get them registered hereafter according to enjoyment.

9. The Inam Register Extract shows that there were certain minor inams in the Komarapalayam village. Those inams were held by (1) Sri Damodaraswami temple, (2) Sri Kailasanathawami temple, (3) SriBadrakali temple (4) Sri Lakshminarayanaswami temple and (5) Sri Angaliamman temple. The minor inams were also confirmed at the inam settlement: proceedings, and separate title-deeds were issued to the respective grantees. Exhibits A-2 to A-6 are the extracts from the Fair Inam Register relating to them.

10. Before a village can come within Section 3(2)(d) of Act I of 1908, there should have been a grant of that village in inam.

11. The term, "inam" would imply a gift, whether it be of the land, its assessment or a portion thereof. In Wilson's Glossary, the term, "inam" has been defined thus:

In India, and especially in the South, and amongst the Mahrattas, the term was specially applied to grants of land held rent free, and in hereditary and perpetual occupation : the tenure came in time to be qualified by the reservation of a portion of the assessable revenue, or by the exaction of all proceeds exceeding the intended value of the original assignment; the term was also vaguely applied to grants of rent free land, without reference to perpetuity or any specified conditions.

In *S. Sundaram Ayyar, Receiver of the Tanjore Palace Estate Vs. Ramachandra Ayyar and Others*, . the word "inam" was taken to mean a gift or benefaction and a gift by a superior to an inferior. In *G. Sam Vs. T. Ramalinga Mudaliar and Others*, . "inam" was taken to mean a present or gift either to an individual or for public purpose, and that an inam implied a grant of land with a remission partial or total of the revenue. In *Lakshmana v. Venkateswaralu* (1949) 2 M.L.J. 500 the Privy Council observed:

Inam is a well-known word of "arabic" origin which means reward or favour. The word came into use after Muhammadan conquest. In ancient days, grants of land or revenue, were made by Hindu sovereigns to individuals, particular families, or communities for various purposes or to religious institutions, for their upkeep. These were known as "Manyams".

12. Can it be said that the grant by the Raja of Mysore in 1760 which included Komarapalayam was an inam? It was no doubt rent-free. But the essential element of an inam, namely a benefaction, is lacking. The grant, whether it be of the land, its assessment or both, was one made in consideration of a payment by

the grantee. It cannot be held to be an inam. The circumstance, that the grant was treated as an inam at the time of the inam settlement proceedings and title deeds were issued on that basis, cannot affect the original character of the grant. An inam title-deed does not operate either to enlarge or abridge the rights of the inamdars under the original grant. That apart, it is necessary for the application of Section 3(2)(d) that the original grant itself should have been in inam. Such, however, is not the case with respect to the grant in the instant case : therefore, inam Komarapalayam would not be an estate within the meaning of Section 3(2)(d) of the Estates Land Act.

13. The Estates Abolition Tribunal held that Komarapalayam was only a part or hamlet of the entire village of Jagadapady, and not being thus a whole village it could not be held to be an estate. Column 12 of Exhibit A-i to which we have made reference, shows that Komarapalayam was only a hamlet attached to Jagadapady village. The learned Counsel for the appellants contended that, as column 21 of Exhibit A-i specifically referred to Komarapalayam as a village, it should be held that the grant comprised 13 independent villages, of which Komarapalayam was one. Much significance cannot, however, be attached to the specification of Komarapalayam as a village, as the entry in column 12 mentions it only as a hamlet. It is well known that hamlets are sometimes loosely called as villages. There is no other evidence in the case to indicate that Komarapalayam was a separate village at the time of the grant.

14. The position then is that, while the grantees were enjoying the entire village of Jagadapady and its hamlets, Tippu Sultan took over nearly half of it, confirming the Aghahamdars in their possession of the other half. The Inam Register Extract refers to Tippu having "confirmed" the remaining lands as "ardha manyam" village. An ardha manyam would imply the grant of half the revenue. But in the present case it is not disputed that the grant was wholly rent-free. Ardha manyam would in this case therefore signify that the grant was geographically half. Exhibit A-i states that "the remaining moiety was confirmed under the name of ardha manyam village". That would imply that (i) what was left with the inamdars was half a village and (2) that Tippu in effect granted that half and called it ardha manyam village. Captain Macleod affirmed what Tippu did. It is unnecessary to consider whether in the circumstances it could be held that there was any fresh grant by Captain Macleod, as Tippu's recognition of the village as an ardha manyam would amount to fresh grant, and not a mere recognition of the original grant of the year 1760. In *Nallathambi v. Perumal Chetty* (1953) 1 M.L.J. 786. the identity of a village originally granted disappeared as a result of resumption of a moiety : thereafter there was a grant by the British Government of scattered bits of land in lieu of the unresumed moiety of the original grant. It was held that there was neither confirmation nor recognition by the British Government of a grant of a whole village as such, and that the total extent of such portions could not be held to be an inam village. In the present case it cannot be said that there was a fresh grant in lieu of the unresumed portions, as the unresumed portion was confirmed both by Tippu and

Captain Macleod. Nor can it be said that it is a mere case of confirmation by Tippu of the original grant. His recognition of it as an ardhya manyam village would suggest that it was a grant by him of half the village, and the subsequent confirmation by the British Government being only of that grant, it cannot be said. that to be a grant of a whole village.

15. The Tribunal has rested its conclusion on yet another ground, namely, the failure of the Government to prove that the grant was of an entire village, when there existed five minor inams therein.. It does not appear from the records available whether the minor inams were granted before or after the major grant. If the former was not the case it might be that the minor inams might have been granted subsequently either by the Ruler who reserved that area to himself at the time of making the major grant or by the grantees after having got the entire village. If it were a case where the Ruler had reserved that area to himself, it cannot be said the major grant was of an entire village.

16. It was contended on behalf of the appellants that u/s 8 of Act XXX of 1956 the burden of proof that an inam village was not an estate lay on the inamdars and it was for them to show that the grant was not of the entire village but that something was reserved. Section 8 of Act XXX of 1956 runs:

In deciding the question whether any inam village or a separated part of an inam village Was or was not an estate within the meaning of the Estates Land Act as it stood before the commencement of the Madras Estates Land (Third Amendment) Act, 1936 (Madras.Act XVIII of 1936), it shall be presumed, until.the contrary is proved, that such area or part was such an "estate"

17. This provision is similar to Section 23 of the Madras Estates Land Act. The section postulates the existence of ari inam village : if there is one such village, that is, an entire village, a presumption is provided for deciding whether the inam village was an estate before the Amendment Act of 1936 or one that became an estate thereafter, the presumption (rebuttable) being that it is the former. That is to say, there would be a presumption in the case of an inam village that the grant was of melwaram. alone and not both melwaram and kudiwaram. That presumption will not apply where the controversy is whether the gram was of an entire village or part of a village. If such a question arises, it has to be decided on the ordinary rules of evidence irrespective of the presumption u/s 8. In Varadarajaswamivari Temple v. Govinda (1958) 2 M.L.J. 463, it was held that to an enquiry before a Settlement Officer u/s 9 of the Madras Act XXVI of 1948 either initiated suo motu or on application by any party, the normal rule as to burden of proof applicable to the suits in a civil Court would not apply. The reason for the decision was that the proceedings before a Settlement Officer u/s 9 of Act XXVI of 1948 were different in nature from those in a dispute in a civil Court. That principle will not apply to the case of an enquiry initiated u/s 3 of Act XXX of 1956. The proceedings u/s 3 are of a judicial nature and the ordinary rules of evidence, that is, those relating to the burden of proof, etc., would apply to them. In Hals-bury's Laws of England, Volume 15 (Third

edition), dealing with the question of onus of proof, it is stated at page 267:

In legal proceedings the general rule is that he who asserts must prove : this proposition is sometimes more technically expressed by saying that the burden of proof rests upon the party who substantially asserts the affirmative of the issue. This rule is derived from the Roman Law, and is supportable not only upon the ground of fairness, but also upon that of the greater practical difficulty which is involved in proving a negative than in proving an affirmative.

The reason for the rule is twofold : firstly that he who invokes the aid of law should prove his case, and secondly that a negative is more difficult to establish than the affirmative. In considering the question as to which of the two parties asserts the affirmative, regard must be had to the substance of the claim, and not to the form. There is nothing in the Explanation to Section 3(2)(d) of Madras Act I of 1908 to cast the onus of proof on the landlord. In *The District Board, Tanjore v. Noor Mohamed* (1952) 2 M.L.J. 586 the Supreme Court proceeded on the assumption that the burden of proving that certain lands constituted an estate was upon the party who set up the contention.

18. It was contended on behalf of the appellants that the observations of the Supreme Court should be confined to the case where the jurisdiction of the civil Court was in dispute. Although the actual dispute in that case, related to the question of ouster of the civil Court's jurisdiction, the observations of the learned Judges could not be confined to those cases. The rule as to burden of proof is a rule of evidence applicable to all judicial proceedings. In *The State of Andhra Pradesh Vs. Korukonda Bhattaru Appalacharyulu and Others*, it was held that the burden lay upon the landlord to show that the grantor reserved some interest in the land and granted the minor mam subsequent to the named village. The reasons for the conclusion appears to be: (1) that the Legislature which enacted Explanation 1 to Section 3(2)(d) would not have contemplated to cast the initial onus on the tenant, as the general intention of the statute was to confer rights of occupancy on the tenants of inam villages, and (2) that the landlords would be in a more advantageous position to prove the case, as they would have in their possession records. With great respect to the learned Judges, we are of the view that neither of those considerations could modify the rule as to onus. In the present case the inamdars stated that Komarapalayam was not an estate. To place the onus upon him would be to require him to prove a negative : on the other hand, the case of the State is that it was an estate, and as such one or more of the tenancy legislations in the State would apply to the village. It is clear that it is the State that asserts the affirmative. It would, therefore, follow that the onus should be on the State to prove that the grant was of an entire village. The Tribunal held that the State has failed to discharge that onus. From the evidence available in the case it cannot be said that there has been any satisfactory proof that Komarapalayam was an entire village or even a named village at the time of the grant so as to come within Section 3(2)(d) of the Estates Land Act.

19. It was contended on behalf of the respondent that Section 3(2)(d) would not apply unless the entire grant was confirmed by the British Government and that as in the present case the confirmation related only to half of the original grant, it could not be said that there has been a confirmation of the grant. Reliance was placed in this connection on the decisions in *V. Srinivasa Ayyangar Vs. The State of Madras and Another*, ; *Nallathambi v. Perumal Chetty* (1953) 1 M.L.J. 786; *Sivarama Sastry v. State* (1958) 1 A.W.R. 195; and *Karlmuthu Thiagnrajan Chettiar v. State of Madras* (1959) 1 m.l.j. 176, where it was held that the confirmation of only half of the original grant could not bring the village within the definition of the term " estate " u/s 3(2)(d). A different view has been taken in a recent decision of this Court in W.A. No. 119 of 1956. In that case an entire village was originally granted. Later, when the country came under the Mohammedan Nawabs, half of the village was taken by the Ruler and granted to a Darga. The Inam Commissioner recognised rights of both the grantees. It was held that, as regards a portion of the inam which was granted in favour of the representatives of the original grantee the village could be deemed to be an estate, while the grant by the Nawab in favour of the Darga relating only to half the village would not be an estate. It is unnecessary for the purpose of the present case to consider whether there is a conflict between the decisions referred to above and whether the matter should be referred to a Full Bench.

20. For the reasons stated already, we are of the view that the conclusion arrived at by the Tribunal is correct.

21. This appeal fails, and is dismissed with costs.