(1955) 07 AP CK 0015

In the Andhra Pradesh High Court

Case No : Ref. Case No. 6 of 1955

Sreeraiuulu Chetti APPELLANT

Vs

Venkalanarayana and Others RESPONDENT

Date of Decision : 22-07-1955

Acts Referred:
Land (Reduction of Rent) Act, 1947 — Section 20, 3(2)(4), 4

Citation : (1955) 07 AP CK 0015

Hon'ble Judges : Subba Rao, C.J;Bihmasankaram, J

Bench : Division Bench

Advocate : Advocate General and Vedantechari, Amicus Curiae, for the Appellant;

Judgement

Subba Rao, C.J.—The Additional District Munsif, Parvatipur, referred u/s 1.13 of the CPC the question regarding the interpretation of the relevant provisions of Madras Act XXX of 1947 under which the Tipal Government professed to issue the notification in Tregard to the reduction of rents to operate on the entire Jeypore Kumarika''s Estate.

2. The facts that led to the reference may be briefly stated: The suit holding is part of No. 9 Darmila inam of Belagam within the Jeypore Kumarika''s Estate. The said inam is a post-settlement minor inam. The Government, by notification issued under the Madras Estates Land (Reduction of Rent) Act 1947, fixed the rate of rent payable on the suit lands. They also issued a notification on 2-8-1949 under Act XXVI of 1948 taking over the entire Zamindari including the minor inam in which the suit lands are situated. The Plaintiff filed the suit for recovery of arrears of rent from 1949 lo 1952.

The Defendants contended, inter alia, that it was only the Government that was entitled to collect rent from the Defendants and that, after the estate was taken over by tire Government, the District Munsif''s Court had no jurisdiction to entertain the suit. In V. Srinivasa Ayyangar Vs. The State of Madras and Another, , a Division Bench of the Madras High Court, of which one of us was a member, construed the provisions of Act XXVI of 1918 in their application ID a minor inam in an estate. At page 321, the Division Bench observed:

Though the said inam cannot be an estate within the meaning of Section 3(2) of the Madras Estates Land Act, the inamdar is a landholder within the meaning of Section 3 (5) of the Act. It is because he is either a person owning a part of the estate or a person entitled to collect the rents for the whole or any portion of the estate by virtue of the transfer from the owner. For the purpose of the definition of land-holder u/s 3 (5) he is the owner of the part of the estate though the proprietor of the estate did not completely part with his entire rights in the estates.

The reversion still vests in him. He will be entitled to recover jodi from the inamdar. The proprietor therefore docs not cease to be the owner. If that is the legal position, it follows that minor inam is part of the Zamindari. The definition of the Zamindari estate in Act XXVI of 1948 accepted and adopted the view expressed by judicial decisions. The Act purports to abolish the estates defined under tire Madras Estates Land Act except inam villages which became estates by virtue of the Madras Estates Land (3rd Amendment) Act, 1930.

The definition of Zamindari estate also shows that it takes in even the minor inams which did not come under any one or other of the other categories of the estates. It follows that though a minor inam cannot be treated as a separate estate, it vests in the Government along with the parent estate subject to the other provisions of the Act.

Then they proceeded to state:

In our view, Section 20 of Madras Act XXVI of 1948 saved such mirror inams We therefore hold that the post-settlement minor inams or the minor inams included in the assets of the Zamindari at the time of the permanent Settlement would be protected u/s 20 of the Act and the rights, there under can be enforced against the Government.

When the Government pleader contended that, though the inam in that case was not an under-tenure, it being part of a Zamindari tire provisions of Act XXX of 1947 would apply, we refused to express our opinion on the question as the Government did not purport to issue the notification on the basis of the entire Zamindari. That question now falls to be considered.

3. The question, therefore is what is the effect of Section 20 of Act XXVI of 1948 on the rights of the minor inamdar and the ryots under him. Section 20 reads:

(1) In cases not governed by Sections 18 and 19 where before the notified date, a landholder has created any right in any land (whether by way of lease or otherwise) including rights in any forest, mines or minerals, quarries, fisheries, or ferries, the transaction shall be deemed to be valid; and all rights and obligations arising there under, on or after the notified date, shall be enforceable by or against the Government.

4. The Advocate General, appearing in support of the reference contends that Section 20 takes away minor inams out of the operation of the Act with the result that the rights and obligations of the inamdars vis-?-vis the Government and also the ryots would continue to be governed by the pre-existing law i.e., the provisions of the Madras Estates Land Act, where as Mr. V. Vedantachari, learned Counsel who appeared in the case at our request as amicus curiae, argues that the Estates Land Act was repealed and that the relationship of landlord and tenant was extinguished and, therefore, though the minor inam was saved, the relationship between the inamdar and his tenant would no longer be governed by the provisions of the Estates Land Act but would thereafter be governed only by their contractual obligations or customary incidents.

5. To appreciate the conflicting contentions and to afford a reasonable solution, it is necessary to consider the scope of Act XXX of 1947 and that of Act XXVI of 1948 and the relevant sections therein. Madras Act XXX of 1947, as its preamble shows, was enacted as the rents payable by ryots in estates governed by the Madras Estates Land Act 1908 were in many cases substantially higher than the assessment levied on lands in ryotwari areas in the neighborhood and as it was expedient to provide for the reduction of such rents approximately to the level of the ryotwari assessments in the neighborhood.

Under Section 3 (2) of the Act, after considering the recommendations of the Special Officer and the remarks of the Board of Revenue thereon, the State Government shall fix the rates of rent payable in respect of each class of ryoti land in each village in the estate. By Section 3 (4), after such an order has taken effect in respect of any estate or portion of an estate, the rent due in respect of ryoti lands in such estate or portion with effect from the commencement of the Fasli year 1357 as well as the rents which have fallen or may fall due in respect of such lands for any fasli subsequent to fasli 1357 until the commencement of the fasli year in which the estate may be finally taken over by the State Government and any interest payable on such rents shall be recovered by list: Slate Government as if such rents is interest were arrears of land revenue due to them and the amount so recovered in respect of each fasli, alter deducting there from the cost of such recovery as determined in accordance with such rules as may be made by the Stain Government in that behalf and also the peshkashcesses and other moneys due from andhokvr to the State Government and constituting a charge on the estate shall be paid to the land holder.

Section 4 prescribes the it where an order is published u/s 3 Sub-section (2) in respect of any estate or portion of an estate, a ryot: shall not be bound to pay rent for any ryoli land held by him in such estate or portion at a rate exceeding that payable under, that Sub-section or u/s 3 (2-A) as the case may be notwithstanding anything again: contained in the Madras Estates Land Act, 1908.

6. The gist of the aforesaid provisions is that the rent in respect of each class of ryoli land is fixed by the Government No ryoti is liable to pay the landholder rent in excess of the rate so fixed. The Government is empowered to collect the rent

at tire rate so fixed until, the commencement of fasli year in which the estate may be finally taken over by the State. It cannot, therefore, be disputed that under this Act rent can be fixed in respect of each class of ryoti land and that the ryot is not liable to pay rent higher than that so fixed.

If so, the minor mam, being a part of the estate, the Government were which their rights in issuing a notification lixmg the rent in respect of the ryoti. lands therein. Another point to iced is that none of the sections of the Act pnchides the land holder from collecting the reduced ale of rent from the ryots even alter the taking over of the estate by the Government if any part of the estate, is saved from the operation of the impending Act, for Section 3 (4) only says that Government should collect there until the commencement of the fasli year in which the estate may be. finally taken over by the Government.

When the Government takes over the Estate, it ceases to have any more power to collect the rents on behave of the land -holder but that will not preclude expressly or by necessary implication the right of the landholder of the minor inams from collecting rents due from his ryots if his rights are expressly saved.

7. We now come to Act XXVI of 1948, which empowers Government to take over estates. It came into force on the 19th of April 1949. The relevant provisions of the Act read:

Preamble;- Whereas it is expedient to provide for the repeal of tire permanent settlement, the acquisition of the rights of land-holders in permanently settled and certain other estates in the province of Madras and the introduction of the ryotwari settlement in such estates, it is enacted as follows:

Section 1. (3): It applies to all estates as defined in Section 3 Clause 2 of the Madras Estates Land, Act, 1908 except inam villages which became estates by virtue of the Madras Estates Land Act (Third Amendment) Act, 1936.

Section 3:

With effect on and from the notified date and serve as otherwise expressly provided in this Act.

(a) the Madras Permanent Settlement Regulation, 1802, the Estates Land Act, and all other enactments applicable to the Estates as such except the Madras Estates Land (Reduction of Rent) Act, 1947, shall be deemed to have been repealed in their application to the estate.

X X X (I) the relation-ship of land-holder and ryot shall, as between them, be extinguished.

(g) ryots in the state and persons holding under them shall, as against the Government, be entitled only to such rights and privileges as are recognised or conferred on them by or under this Act, and any other rights and lieges which may have accrued to them in the estate before the notified date against the principal or any other land-holder thereof shall cease and determine and shall not be enforceable t the Government or such land-holder.

Section 11: Every ryot in an estate shall, with elect on and from the notified date, be entitled to a ryotwari patta.

Section 20:

(I) In cases not governed by Sections 18 and 19 where before the notified date, the land-holder has created any right in any land (whether by way of lease otherwise) including rights in any forest, mines or minerals, quarries, fisheries or ferries, the transaction shall be deemed to be valid, and all rights and obligations arising there under, on or alter the notified dale, shall be enforceable by or against the Government.

8. The aforesaid provisions may be summarised thus:

9. The Act does not apply lo all estates. Inam villages, which became estates by virtue of the Madras Estates Land (Third Amendment) Act, 1936, are excluded i.e., the provisions of the Estates Land Act would continue to apply to such estates. Even otherwise, the Estates Land Act shall be deemed to have been repealed in its application to those estates save as otherwise expressly provided for i.e., if any provisions of the Act saves any estate, or any part thereof from the operation of the Act, the Estates Land Act would continue to apply to that part of the Estate. In so far as there is no such exclusion, the relationship of landlord and ryot would be extinguished and the ryots would be entitled to get ryotwari patta. The short question, therefore, is whether Section 20 of the Act saves minor inams from the operation of the Act.

10. In V. Srinivasa Ayyangar Vs. The State of Madras and Another, it was held that post-settlement minor inams or minor inams included in the assets of the Zamin-dari at the time of the permanent Settlement would be protected u/s 20 of Madras Act XXVI of 1948 and the rights there under can be enforced against the Government. If Mr. Vodanlacharfs contentions, namely, that though u/s 20 the minor inamdar''s rights are protected, the provisions of the Act should be applied with the result that the Estates Land Act would cease to govern live rights of the minor inamdar and his tenants, be accepted, it would lead to an anomalous position.

It would mean that the ryots, for whose protection the aforesaid two Acts wove enacted, would have no benefit and, indeed, they would be in a worse position than they were before the Acts were passed. Their occupancy rights would come to an end. The rents will no longer be governed by the provisions of the Estates Land Act of the Madras Estates Land (Rent Reduction) Act. Their rights would be regulated by the terms of the contract if there was any or by the customary incidents.

In short, they would be at the mercy of the land lord. The landlord also would lose the benefit of the machinery provided under the Estates Land Act for recovery of his rents. On the other hand, if Section 20 is construed as excluding the. land covered by that Section from the operation of the provisions of the Act, it would evolve a consistent and satisfactory scheme without causing hardship to either party, or without frustrating the object for which the Act was enacted.

Section 20 says in terms that if the landlord has created any right in any land, the transaction shall be deemed to be valid. If the section has not been enacted, u/s 3 of the Act, the entire estate shall stand transferred to the Government but by reason of that Section, a transaction, whore-under the right was created by the land-holder before the notified date, shall be, deemed to be valid and all rights and obligations arising (hereunder shall be enforceable by or against the Government.

It is valid because the said section saves it from the operation of the oilier provisions of the Act. If it is saved, the preexisting law should apply to the owner of that interest and the tenants holding under him i.e., to that extent the Estates Land Act would continue to apply.

11. Nor can we accept the arguments of Mr. Vedantachari that the Rout reduction Act would not apply to ryots. As we have already pointed out, the rents payable on ryoti lands in the estate would be fixed under that Act. The Government could not recover the rents after the Estate is taken over. But after the estate is taken over under the later Act, as Section 20 saves the rights of the minor inamdar, there is no provision which prevents him from collecting the lawful rents fixed under the earlier Act from his ryots.

12. From the aforesaid discussion, the law on the subject may be summarised thus: Though a post-settlement minor inam or a pre settlemenli minor inam included in the assets of the Zamindari is not separate estate, it is part of its parent estate and the Government can, therefore fix the rate o? rent payables in respect of each class of ryoti land in that part of the estate along with the parent estate. Though they can issue a general notification u/s 3 in regard to the entire Zamindari, the rights of the aforesaid minor inamdar are expressly saved under the provisions of Section 20, and, therefore, the Government has no power to take over that part of the Estate.

The rights inter se between the minor inamdar and the ryots holding under him would be governed by the provisions of the Madras Estates Land Act but the landholder would, even after the notification be entitled to recover rents from his ryots under the provisions of the Madras Estates Land Act but only at the rate fixed under Madras Act XXX of 1947.

13. We express our thanks to Mr. Vedantachari for helping us as amicus curiae. The reference is answered accordingly.

