
(1953) 04 MAD CK 0054

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 36 of 1951

Sri Kalahasteeswaraswami Temple

APPELLANT

Vs

Madras State

RESPONDENT

Date of Decision : 17-04-1953

Acts Referred:

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

Citation : AIR 1954 Mad 498 : (1953) 66 LW 1004

Hon'ble Judges : Venkatarama Aiyar, J

Bench : Single Bench

Advocate : V. Vedanthachariar, for the Appellant; Govt. Pleader, for the Respondent

Judgement

Venkatarama Aiyar, J.—This is an application on behalf of the Kalahastheeswaraswami Devasthanam for the issue of a writ of mandamus prohibiting the State of Madras from taking possession of the village of Kalahaati.

This village formed part of the ancient Zamindari of Kalahasti which is one of the impartible estates included in the Madras Impartible Estates Act II of 1904. In the year Virodhikrit (1791-92) the Rajah of Kalahasti granted the village in inam to the temple. On 16-9-1896 the then Zamindar of Kalahasti executed a mortgage over this and other villages. There was a suit to enforce this mortgage O. S. No. 14 of 1909 on the file of the Subordinate Judge's Court, North Arcot, and a decree was passed therein for the sale of the hypotheca.

A new zamindar having succeeded to the estate, he filed O. S. No. 8 of 1911 in the Court of the Subordinate Judge, North Arcot, as hereditary trustee of the Kalahastheeswaraswami Devasthanam, for a declaration that the mortgage dated 16-9-1896 in so far as it related to the village of Kalahastl was not binding on the temple, as the same was executed for the personal debts of the zamindar. That suit was decreed, the court holding that the grant of the inam was true and that the mortgage was not binding on the temple. This decision was affirmed on appeal to this Court In -- "A. S. No. 283 of 1911 (Mad) (A)". The Zamindari of

Kalahasti is One of the estates abolished by Madras Act XXVI of 1948. On 12-12-1950 the State of Madras notified the village of Kalahasti as a zamindari estate and it is the validity of this notification that is in question in this petition. The contention of the petitioner is that it should be notified as an under tenure and not as a zamin estate.

2. For a proper appreciation of the contentions involved in this petition, it is necessary to examine the scheme of the Act as regards notification of estates. Section 3(b) provides that on notification an estate shall in its entirety stand transferred to the Government and vest in them. The estates to which the Act applies are classed u/s 2(3) into three categories, zamindari, under-tenure or inam estate. u/s 2(7) an inam estate is defined as meaning, all inam villages which fall within Section 3(2)(d) of the Estates Land Act excluding those which became estates under the 1936 amendment. u/s 2(15) an under tenure estate means all estates which fall within the definition of estates u/s 3(2)(e) of the Estates Land Act. The definition of a zamindari estate u/s 3(18) includes estates falling within Section 3(2)(a), (b) and (c) excluding estates which fall u/s 3(2)(e).

This three-fold classification of estates has a material bearing on three matters--the amount of compensation which the proprietor is entitled to get under the Act; the right to get the ryotwari patta for lands situated within the estate; and the procedure to be adopted for determining certain rights of holders of inam estates and under-tenures. u/s 37 the compensation payable is calculated with reference to a scale of "basic annual sum". The principles on which that sum is determined vary with the three classes of estates. Section 27 lays down the principles on which the basic annual sum should be calculated for zamindari estates, Section 31 for inam estates and Section 36 for under tenure estates. It may in general be stated that the compensation payable will be higher in the case of inam estates and under-tenure estates created before 13th July 1802 than in the case of zamindari estates, or under-tenure created after that date.

With reference to the right to get ryotwari pattas, a similar difference is observable with reference to inam estates and under tenure created prior to 13th July 1802 on the one hand and zamindaris and under tenure s created after that date, on the other. Then again while the ascertainment of what are zamindari estates presents no problems, the question whether an estate is an inam falling within the scope of the Act is often one of difficulty, depending for its decision on whether the grant was of both the warams in an entire village. Section 9 of the Act creates a special machinery for the determination of this question. Under that section the Settlement Officer is empowered to decide suo motu or on the application of parties whether the inam village is an inam estate as defined in the Act or not. Against this decision there is an appeal provided to a Tribunal. Section 10 enacts special provisions with reference to under tenure estates. The landlord has to apply to the Settlement Officer within three months of the notification of an estate as under tenure for a determination of the question, whether the estate was created before the permanent settlement or after. The decision of the

Settlement Officer is open to appeal to the Tribunal.

This classification of the estates into three categories is, it is clear, mutually exclusive and it would make all the difference in the right of the parties whether a particular estate is classed under the one head or the other.

3. Now, the point for determination is whether the village of Kalahasthi which was granted in Inam to the Kalahastheeswaraswami Devasthanam is, as notified by the Government on 12-12-1950, a zamindari estate as defined under the Act. The contention of the petitioner is that it is really an under tenure and should have been notified as such. The contention on behalf of the State is that the village of Kalahasthi was separately registered and assessed to separate peshcush on 3-4-1932 under the provisions of Act I of 1876 and that therefore it was rightly notified as a zamindari estate. This contention proceeds on a misapprehension as to the true scope and effect of separate registry.

Regulation XXV of 1802 under which estates were permanently settled provided that proprietors should be at liberty to make transfers only with the consent of the Government and that unless such transfers were registered at the office of the Collector and peshcush separately fixed, the entire estate should be liable for the payment thereof. It was held in -- "*Venkateswara v. Alagoo Moot-too*", 8 Moo Ind App 327 (PC) (B) that the effect of this section was not to avoid the transaction as between the transferor and the transferee but to save the rights of the Government. One consequence of this was that the lands in the possession of transferees of email portions of zamindaris, were often proceeded against for the recovery of the revenue payable to the Government and considerable hardship was experienced. It was to remedy this state of affairs that Madras Act I of 1876 was passed. Under that Act a right was conferred on the alienee to have the portion transferred to him separately registered and the proportionate peishcush payable thereon fixed. Thus what the Act does is not to confer any title on the transferee but to recognise a pre-existing title and to grant relief in the matter of liability to pay the peishcush. The transferee derives his title not from the separate registry, but the transfer.

4. It should also be remembered that the definition of an estate in Section 3(2) of the Madras Estates Land Act comprehends within its range different categories of tenures and though they have been brought together under a single definition for the purpose Of granting occupancy rights to tenants therein, they differ widely from one another in their origin and in their legal incidents. Thus, in the category of zamindars were included the descendants of ancient Royal houses, Military Chiefs and Farmers of Revenue, They were all treated as one class u/s 3(2)(a) and (c). There were gifts of land made by the ancient sovereigns or by the Zamindars to temples or to men of learning and plety or as a reward for personal services. These were classed as Inam estates u/s 3(2)(d) of the Estates Land Act. Then there were permanent alienations of the estates by the proprietors, not amounting to transfer of ownership. They were brought in as under tenures u/s 3(2)(e).

The effect of separate registry under the provisions of Act I of 1876 was not to destroy the distinctive features of the several categories of estates; and to convert an Inam Estate into a Zamindari estate. The contention urged on behalf of the petitioner that in deciding whether a particular estate falls under one or the other of the three categories mentioned in Act XXVI of 1948, the question of separate registry would not be a relevant consideration, should therefore be accepted.

5. It is next urged on behalf of the Government that even though the separate registry of the village of Kalahasthi under Act I of 1876 will not have the effect of converting it into a zamindari estate for purposes of Act XXVI of 1948, nevertheless the estate must be considered to be an inam estate and not an under tenure. It will make considerable difference in the rights of the parties whether the village is an inam estate or an under tenure estate. The contention of the petitioner is that as the peishcush for Kalahasthi zamin was fixed not by taking into account the assets of the zamindari but by commuting military service to which it was subject, the matter would be governed by the principle laid down in -- AIR 1922 168 (Privy Council) and that as the Government had no right of reversion to the inam it should be treated as an under tenure.

6. The Government on the other hand contend that what was an Inam grant in 1731-1792 could not cease to be such by what happened at the permanent settlement; & reference is also made to the Allegations in the affidavit in support of the petition where the stand taken is that it is an inam estate. It is unnecessary to decide this point because the only question that arises for determination at this stage is whether the notification of the village of Kalahasti as a zamindari estate is correct or not. There is no need to decide in these proceedings whether it should be notified as an inam estate or as an under tenure. It is sufficient for the purpose of this case to hold that the village of Kalahasti is not a zamin estate and the notification dated 12-12-1950 is erroneous. It is accordingly set aside. The petitioner is entitled to his costs. Advocate's fee Rs. 100.