

(1958) 03 MAD CK 0044

In the Madras High Court

Case No : Appeal No's. 558 and 559 of 1950

Sri Navaneethaswaraswami Devasthanam Sikkil

APPELLANT

Vs

P. Swaminatha Pillai

RESPONDENT

Date of Decision : 18-03-1958

Acts Referred:

Citation : (1958) 03 MAD CK 0044

Hon'ble Judges : Rajagopalan, J; Basheer Ahmed Sayeed, J; Balkrishna Ayyar, J

Bench : Full Bench

Advocate : K. Rajah Ayyar and G.R. Jagadisan, for the Appellant; V. Vedantachari, T.S. Kuppuswami Aiyar, R.G. Rajan and S. Thyagaraja Aiyar, for the Respondent

Judgement

Balakrishna Ayyar, J.—The village of Sellur belongs to the Navaneethaswaraswami Devasthanam, Sikkil. as ekabogam mirasdar or sole proprietor. The village was not an estate within the meaning of Madras Act No. I of 1908 as that Act originally stood, but became one by virtue of Madras Act XXIII of 1936. The lands which form the subject-matter of this litigation are not private lands. On 29th November 1917 this Court decided in A.S. Nos. 146, 228 and 230 of 1916 that the village was not an estate, from which it follows that no ryots had any permanent rights of occupancy in the lands. By a lease deed dated 31st July 1946 the Executive Officer of the Devasthanam leased some of the lands situated in the village to Srinivasa Naidu for a period of three years. Similarly, by another lease deed dated 29th July 1946 the Devasthanam leased some other lands to one Swaminatha Pillai, also for a period of three years. After 31st December 1946 the lessees refused to pay rent at the contract rate. They also refused to surrender possession. They claimed that they had acquired permanent rights of occupancy in the lands and that they were liable to pay only at rates to be ascertained in the manner provided by the Madras Estates Land Act. The District Judge, East Tanjore, upheld the claim of the leases. Thereupon the Devasthanam came to this Court in App. Nos. 558 and 559 of 1950. In Navaneethaswaraswami Devasthanam v. Ganapathi (1955) 2 M.L.J, 112 = 68 L.W.

462 a Bench of this Court, consisting of the Chief Justice and Rajagopala Ayyangar J. held in circumstances similar to those present here, but in respect of other lands in the village, that the ryots were not entitled to permanent rights of occupancy, and, that they were bound by the terms of the lease. A different view, however, was expressed by Subba Rao and Panchapakesa Ayyar JJ. in *Seahayya v. Narasimhacharyulu* ILR 1956 Mad. 1151. In view of this conflict of opinion, Panchapakesa Ayyar J. before whom App. Nos. 558 and 559 of 1950 came up for decision, referred the following questions to a Full Bench:

(1) (a) Under S. 8 (5) of the Estates Land Act, has a landholder admitting any person to the possession of ryoti lands on such terms as may be agreed upon between them for the period of 12 years from the commencement of the Estates Land Act (3rd Amendment, Act 1936) as specifically mentioned in S. 8(5) the right within the period of those 12 years to lease out the lands to any person for 99 years, or any other long period, on such terms as may be agreed between them, or will such lease operate only till 1st November 1948 regarding its terms, and then be automatically replaced by the Estates Land Act ?

(1) (b). If such a lease for 99 years etc. entered into been them within the 12 years period, is held to be valid, as conferring on the lessee a right to continue for the term mentioned, can the landholder claim rents in respect of the holding after 1st November 1948 as per the lease, if the rents stipulated are higher than those claimable under S. 29 of the Estates Land Act, in spite of the lands continuing to be ryoti lands ?

(2) If a landholder, within the 12 years period, admits any person to the possession of such ryoti lands, on such terms as may be agreed upon between them, but the lease extends beyond 1st November 1948, can the lessee continuing in position on 1st November 1948 claim a permanent right of occupancy in the holding, under S. 6 (1) of the Estates Land Act, on the ground that he had been impliedly admitted into possession of ryoti lands situated in an estate, and he has continued to be a tenant under the landholder on 1st November 1948, after the expiry of the 12 years period mentioned in S. 8 (5)?

2. The questions raised by Panchapakesa Ayyar J. may perhaps be restated in a shorter form as follows:

Where before 31st October 1946 a landholder has granted a lease of lands situated in a village, referred to in S. 8 (5) of the Madras Estates Land Act, for a term which runs beyond 31st October 1948, do the terms of the lease remain in force after 31st October 1948, or, does the lease stand determined by reason of S. 8(5), and does the lessee become a ryot with permanent rights of occupancy in the land on and after 31st October 1948, with the further consequence that he is bound to pay only the rent to be ascertained in the manner provided by S. 25?

3. The answer to these questions depends upon the true interpretation of S. 6(1) and S. 8(5) of the Act, which runs as follows:

6 (1). Subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land situated in the estate of such landholder shall have a permanent right of occupancy in his holding. 8 (5), If before the first day of November 1933, the landholder has obtained in respect of any land in an estate within the meaning of sub-clause (d) of Cl. (2) of S. 3 a final decree or order of a competent civil Court establishing that the tenant has no occupancy right in such land, and no tenant has acquired any occupancy right in such land before the commencement of the Madras Estates Land (Third Amendment) Act, 1936, the landholder shall, if the land is not private land within the meaning of this Act, have the right, notwithstanding anything contained in this Act, for a period of 12 years from the commencement of the Madras Estates Land (Third Amendment) Act, 1936, of admitting any person to the possession of such land on such terms as may be agreed upon between them; Provided that nothing contained in this sub-section shall be deemed during the said period of 12 years or any part thereof to affect the validity of any agreement between the landholder and the tenant subsisting at the commencement of the Madras Estates Land (Third Amendment) Act, 1936.

4. Let us start with S. 8(5). When we break it up into its component parts we set this result. First. it applies only to lands situated inside an estate within the meaning of Sub-Cl. (d) of Cl. (2) of S. 3 Secondly, before 1st November, 1933 the landholder must have obtained a final adjudication from a competent civil Court in respect of any land in the estate that the tenant has no occupancy right in such land. Thirdly, no tenant must have acquired occupancy rights in the land before 31st October, 1936. Fourthly, the land must not be private land. Fifthly, and here arises the controversy, for a period of 12 years commencing from 31st October, 1936 the landholder gets the right to admit persons to possession of any land in the estate on such terms as may be agreed upon between them. (Agreements entered into prior to 30th June, 1936 are not affected by this sub-section (a); a separate proviso takes care of them). The question is, what is the extent and scope of the right that the landholder obtains.

5. According to the contention of the Devasthanam what the landholder gets is the "right" to enter into agreements in relation to the land; so long as the agreement itself is entered into within 12 years, it does not matter what the period is during which the agreement is to remain in force. According to Mr. Vedantachari, the learned Advocate for the lessees, the terms of the agreement cannot remain in force for more than 12 years. If we read the section again and try to interpret it according to the ordinary rules of grammar and syntax, it will be found that the phrase "for a period of 12 years" can apply only to the word "right" and not to the words "on such terms as may be agreed upon" by the parties. The Act says that the landholder shall have something. What is that something? The object of the verb "have" is "right". How long is this right to last? That is specified by the words which follow, viz., "for a period of 12 years." As the words stand the sub-section only requires that the agreements must have been entered into during the period of 12 years commencing from 31st October

1936. The words were not sufficient to support or convey the notion, that the agreement works itself but within that period of 12 years. If the intention of the legislature had been that the period of 12 years should qualify not the "right" conferred on the landholder by the sub-section but the terms of the agreement entered into between the landholder and the lessee, then the phrase "for a period of 12 years" would be clearly wrongly placed in the sub-section. To get the result contended for by Mr. Vedantachari, there must be a proviso at the end of the sub-section to this effect:

Provided that the terms of each agreement shall stand determined and cease to have effect on the expiration of 12 years from the commencement of the Madras Estates Land (Third Amendment) Act, 1936.

6. Alternatively, the expression "to be in force for a period not exceeding 12 years" must follow the word "terms". Therefore as we said before, purely as a matter of syntax and grammatical construction, the view expressed in *Navaneethaswaraswami Devastanam v. Ganapati* (1955) 2 M.L.J. 112 = 68 L.W. 462 must prevail.

7. Some arguments were based on the proviso to Sub-S. (5). It was said that there is no discernible reason for treating agreements in force on 31st October 1936 differently from agreements entered into after that date, and that since the legislature has expressly stated that the former class of agreements shall be in force only for twelve years, it could not have intended to lay down a different rule in respect of the latter class of agreements. There are at least two answers to this. One is that no common principle appears to govern the various provisions made in respect of ryoti lands which have vested in a landholder. For example S. 8(4) deals with cases of vesting by inheritance after 1936. It will be difficult to say that vesting by inheritance is analogous to cases provided for in Sub-S. (5) of S. 8. But the language used in Sub-S. (4) in relation to the questions we have to answer is practically identical with the language used in Sub-S. (5). Sub-S. (1) of S. 8 deals with all forms of vesting including inheritance.

But, vesting by inheritance prior to 1936 which is comprehended in Sub-S. (1) is treated differently from vesting by inheritance subsequent to 31st October 1936.

8. Next it is possible to say in respect of the proviso and that with a fair measure of persuasiveness—that since in respect of lands covered by agreements in force on 31st October 1936 the legislature has made express provision that the terms of such agreements shall be in force for 12 years, but has made no such provision in respect of agreements subsequent to 31st October 1936 its intention was to treat the two classes of agreements differently.

9. Mr. Vedantachari then said that a key to the problem is to be found in Sub-S. (4) of S. 8 as it stood before it was amended in 1936. That subsection then ran as follows:

In cases where the interest of the ryot in the holding has passed to the

landholder by transfer for valuable consideration before the passing of this Act otherwise than at a sale for arrears of rent, or has passed by inheritance, the landholder shall have the right for a period of 12 years from the passing of this Act of admitting any person to the possession of such land on such terms as may be agreed upon between them and the person so admitted shall not be entitled during such period to the benefit of the Provisions of S. 46. In cases where such interest passes to the landholder by inheritance after the passing of this Act, the landholder shall have the same right for a period of 12 years from the date of succession.

Exception: Notwithstanding anything contained in this section where before or after the commencement of this Act, the kudivaram interest in any land comprised in an estate falls within Cl. (d) of Sub-S. (2) of S. 3 has been or is acquired by the inamdar such land shall cease to be part of the estate."

10. Mr. Vedantachari's argument was this: the old sub-section first provided that where the kudivaram interest had vested in the landholder by purchase, otherwise than at a sale for arrears of rent, or by inheritance the landholder was to have the right, for a period of 12 years of admitting any person to the possession of the land on such terms as might be agreed upon, and then it went on to add very specifically that a person so admitted would not have the right during such period to apply to the Collector under S. 46 of the Act. This implied that on the expiration of the 12 years he could so apply, notwithstanding whatever covenants may have been incorporated in the agreement he entered into with the landholder. This is clear evidence, said Mr. Vedantachari, that the legislature intended that in the case also of the leases provided for by S. 8(5) the terms or covenants contained in the lease or agreement between the parties should remain in force only for 12 years.

11. We are unable to accept this argument. The present Sub-S. (5) of S. 8 was not in the Act either when it was passed in 1908 or even when S. 8 was amended in 1934. S. 8(5) was a wholly new provision to deal with a special class of estates. the inam villages that became estates after the amendment of 1936. S. 8(5) cannot, therefore, be construed in the light of Sub-S. (4) as it stood in 1908. S. 46 itself, to which the rights of the ryots secured by the old S. 8(4) were correlated, was repealed in 1934. Besides the language of the old S.8(4) was different from that of the new S. 8(5). We shall set out the relevant passages in the two sub-sections. S. 8(4):

The landholder shall have the right for a period of 12 years..... of admitting any person to possession..... and the person so admitted shall not be entitled during such period to the benefit....

Sec. 8(5) runs

..... the landholder shall have the right..... for a period of 12 years.... of admitting any person to the possession of such land.....

12. The argument of Mr. Vedantachari further assumes that the legislature intended to treat the cases that fell under S. 8(5) in the same way as all the different classes that were clubbed together in the old S. 8(4), an assumption for which we see no basis or justification. We are unable to see any unity of purpose or identity of objective among the several classes dealt with in S. 8 as it now stands.

13. The next argument of Mr. Vedanta form. S. 3(16) of the Act defines "ryoti land" as including all cultivable land in an estate other than private land and certain other categories which are not relevant here. The agreements envisaged in S. 8 (5) are leases of ryoti lands. By virtue of S. 6, every ryot admitted to possession of ryoti land would acquire permanent rights of occupancy. What Sub-S. (5) of S. 8 does is to suspend for a period of 12 years the right of the person admitted to the possession of such ryoti lands to acquire permanent occupancy rights.

14. This theory, assuming for a moment that it has any foundation at all, runs at ones into serious difficulties. During the period of 12 years between 1936 and 1948 more than one person may have been admitted to possession of the same ryoti land-one lessee being admitted on the termination of the lease of his predecessor. How are we to determine which person in the series of lessees is to have permanent rights of occupancy? Mr. Vedantachari suggested that it would be the last lessee who would acquire permanent rights of occupancy. The question at once arises, why should that be so? How is his claim superior to that of his predecessors? Why should not the rights be conferred on the first or any intermediary lessee instead of the last? It was suggested that one process by which it can be said that the earlier lessees acquired no occupancy rights would be to hold that during the time they were in occupation, the land was not ryoti land. But then this destroys the theory of Mr. Vedantachari, that the ryoti character of the land was only ""suspended" or held in abeyance. Besides, it necessarily implies that at the time the last tenant, that is to say, the tenant in occupation on 31st October 1948, was inducted into the land it was not ryoti land. If that were so, S. 6(1) will not apply to him at all, and it is only under that Sub-section that occupancy rights can be claimed.

15. There was another line of argument but it was equally unhelpful. Mr. Vedantachari urged that it was (sic) of the expiry of the 12 year period that acquired permanent rights of occupancy because, having been admitted, he also held the land, while the others who had been admitted during the 12 year period had ceased to hold the land or holding. This ignores the fact that under S. 6(1) the admission itself secured the right to hold the land thereafter; if the right to hold the land remained "suspended" and was not abrogated by any subsequent admission of another person, no claim of permanent rights of occupancy could be founded on the subsequent admission.

16. The next objection to this theory of ""suspension" is that it lacks any foundation whatever. Sub-S. (5) of S. 8 is intended to apply to lands in respect of

which a competent Court has finally found that no ryot had permanent rights of occupancy. When we start with that finding, where is the scope for any theory of suspension? The theory of suspension assumes that the right was previously there but was being held in abeyance. When we start with the finding that there was no permanent right of occupancy at all the theory of suspension becomes wholly inapplicable.

17. Mr. T.S. Kuppaswami Aiyar, who intervened at one stage when Mr. Vedantachari was developing his theory of "suspension", suggested that the true theory would be not one of suspension but of postponement; according to him, the proper way of looking at the matter would be to say that the date on which the occupancy rights could be acquired in the lands referred to in Sub-S. (5) would be only deferred. This modification of Mr. Vedantachari's theory does not take any one out of the wood; because the question still arises "deferred" till when? And that question takes us back to the actual words of S. 8(5).

18. Finally, if all that the legislature intended to say was-and that is the substance of the theory of both Mr. Vedantachari and Mr. Kuppaswami Iyer-that in respect of the lands referred to in Sub-S. (5) of S. 8 permanent rights of occupancy could not be acquired till 1st November 1948, why did it not use a simpler set of words? It would have been quite sufficient for the legislature to have said that in those lands no permanent rights of occupancy could be acquired till 1st November 1948.

19. Mr. Vedantachari next addressed to us a very interesting and elaborate argument based on the history of the legislation and remarked that the legislature showed a constant desire to enlarge and extend the interest of the ryots in the land and to curtail those of the landholder; it was always extremely reluctant to permit a landholder to enlarge his rights in relation to ryoti land, therefore, one would be justified in construing the words used in the sub-section in a manner which would enlarge the interests of the cultivator. On this reasoning two observations may be made. In *Narayanaraju v. Suryanarayudu* ILR 1940 Mad. 1 = 50 L.W.349 (P.C.) the Privy Council had to deal with a case under the Estates Land Act. The report of that case indicates that an argument similar to the one urged before us was advanced before the Privy Council, and on that their Lordships observed:

"They discard all argument from the presumed general intention of the Act as treacherous and inconclusive.

20. The other observation is that the history of the legislation as narrated even by Mr. Vedantachari, shows that at various points the legislature merely enacted a compromise between the conflicting interests of the landholder and the ryot. Adjustments of competing and conflicting interests are not always based on inflexible principles or abstract logic. There is a giving in at one point and a taking in at another. To ascertain what the final result reached was we must examine the actual language employed in recording the compromise. That is to

say, we must go back to the words of the statute and read them again.

21. It is no doubt true that in *Seshayya v. Narasimhacharyulu* ILR 1955 Mad. 1151, *Subba Rao and Panchapakesa Ayyar, JJ.*, expressed the view, for which Mr. Vedantachari contended. But, an examination of the case shows that the question did not really arise for determination. The facts there were as follows: the village containing the suit lands became an "estate" by virtue of Madras Act XVIII of 1936, and the suit lands became ryoti lands therein. The plaintiffs had obtained decrees against the tenants before 1933 to the effect that the tenants had no occupancy rights in the lands. The landholders leased the properties to the tenants for five years to terminate in 1946. After the expiry of that lease, they granted a fresh lease for another year. That lease expired in March 1947. Thereafter, the tenants held over without any lease in their favour and did not surrender the lands in spite of notices to quit. Hence the landholders filed suits for ejectment and arrears of rent and for mesne profits. The suits were filed before 31st October 1948, and on 27th October 1948, that is to say, before the expiration of the 12 years specified in S. 8(5), the tenants themselves were appointed receivers of the properties. It is, therefore, clear that on 31st October 1948 the ""tenants" were not as such in possession of the properties. So, the question did not really arise for determination, whether a lessee continuing in possession after 31st October 1948, would acquire permanent rights of occupancy in the land. The observations in that case were, therefore, obiter.

22. The decision in *Ramachandrayya v. Ranganayakamma* 1957 2 An. W.R. 114, which was cited before us, does not advance the argument of Mr. Vedantachari any further. The learned Judges here merely followed *Seshayya v. Narasimhacharyulu* ILR 1955 Mad, 1151, observing that they were bound by it. But, as we have explained above, the observations in that case were really obiter.

23. In the order of reference which he made, *Panchapakesa Ayyar J.* posed the question, whether a lessee continuing in possession on 1st November 1948 could not claim permanent rights of occupancy on ground that he had been impliedly admitted into possession of ryoti land. Now, when we say that one person has admitted another into possession of his property, we necessarily postulate a conscious and deliberate act. It may be that the person admitting another into possession does not visualise all the legal consequences that follow from his act. but the act itself is consciously and knowingly done. S. 6 (1) speaks of ""every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land." The admission referred to in the section is a conscious and deliberate one and not something which was not intended. There is nothing in Explanation (3) to this sub-section which is inconsistent with this view. That explanation provides for the case of persons who trespass into ryoti land and from whom the landholder receives or recovers payment under S. 163 of the Act, and enacts that in such cases the landholder shall be deemed to have admitted such persons into possession of such land. In other words, even to cover cases of what may be called ratification, the statute has made express provision by

enacting that in such cases the landholder shall be considered on the basis of a conscious act of his to have admitted the ryot into possession.

24. That question was considered in *Rajendramani Devi Garu v. Yellappa Ramu Naidu* 39 M.L.J. 565 = 12 L.W.600, where it was observed:

That there is a distinction between admission of a ryot to possession and a ryot being in possession is not only clear from the ordinary meaning of the two phrases but the legislature itself observes the distinction in various sections of the Act,..... That explanation supports Mr. Narayanamurthi's suggestion that the phrase "person admitted to possession" does not ordinarily mean a person in possession.

25. A Bench of this Court fully went into this matter in *Navansethaswaraswami Devasthanam v. Ganapati* (1955) 2 M.L.J. 112 = 68 L.W. 462, and pointed out that there are only two modes by which statutory occupancy rights could be obtained. The Court observed:

It would also be noticed that the above construction accords with the principle and language of S.6(1) also. Under this provision there are only two methods by which statutory occupancy rights are obtained, (1) possession of ryoti land at the commencement of the Act which in the case of inams of the suit category is fixed as 30th June 1931 (vide Explanation 2). (2) Admission to possession after the coming into force of the Act in the case of inams which became estates by virtue of Madras Act XVIII of 1936 this would be 31st October 1936. Under S. 8(5) the landlord is given a right for a period of 12 years from 31st October 1936, i.e., till 31st October 1948 to admit tenants to possession without the latter obtaining statutory occupancy rights. If there is any admission at a later date, it would not be protected by S. 8(5) and would therefore fall within 3. 6 (1) and confer on the tenants so admitted statutory rights.

26. Earlier in the judgment they repelled the identical contention which Mr. Vedantachari pressed before us in these words:

This interpretation of the section appears to us to be forced and as not giving effect to the actual words of the provision in S. 8(5) which is clearly designed to save from the operation of 3. 6 (1) the terms of contracts entered into within a particular period, namely, between 31st October 1936 and 31st October 1948. If the contract admitting a tenant into possession is saved under S. 8(5), it is difficult to see how that contract itself is exhausted or superseded merely by the 12 years" period prescribed for entering into contract expiring. The learned District Judge appreciated this difficulty and that was why he thought that while all the other terms of the lease would be binding upon the tenant, the only term which ceased to be operative after 31st October 1958 was the covenant to surrender possession. This reasoning itself shows the illegality of the construction adopted by the learned District Judge.

We are in respectful agreement with this reasoning.

27. The result, therefore, is this; Where before 31st October 1946 the landholder has granted a lease of lands situate in a village referred to in S. 8(5) of the Madras Estates Land Act for a term which runs beyond 31st October 1948, the terms of the lease remain in force even after 31st October 1948, and the lease does not stand determined by reason of S. 8(5), and the lessee does not become a ryot and get occupancy rights.

(After the decision of the Full Bench in the aforesaid reference, this appeal coming on for hearing, the Court, Panchapakesa Ayyar, J., delivered the following:

JUDGMENT

(11.04.1958)

28. These two appeals came up before me on 24th February 1955 against the dismissal of O.S. Nos. 24 and 25 of 1949, District Court of East Tanjore. The lands were situated in the inam village of Sellur which became an estate under the 1936 amendment. The vital question decided by the lower Court, and agitated before me, was regarding the occupancy rights claimed to have been acquired in the holdings by the defendants, under S.8(5) of the Estates Land Act, after 31st October 1948, as they continued in possession. As there were conflicting Bench decisions *Sashayya v. Narasimhacharyulu* ILR 1955 Mad, 1151 and *Navaneethaswaraswami Devastanam v. Ganapathi Thevar* (1955) 2 M.L.J, 112 = 68 L.W. 462, on this point, I heard the arguments on both sides regarding the alleged acquisition of occupancy rights under S. 8(5) by the defendants, which point had been decided in favour of the defendants and against the plaintiff-temple by the lower Court, which had also held that it had no jurisdiction to hear the suits regarding the arrears of rent etc., and had left those issues undecided, and I referred the matter to a Full Bench. The Full Bench has, by its judgment, dated 15th March 1958, held that under S. 8(5) of the Estates Land Act a lease granted by a landlord running beyond 31st October 1948 remains in force even after 31st October 1948 and the learned Judges have, therefore, held that the defendants are not ryots and have not, by virtue of their remaining in possession of the lands after 31st October 1948, acquired any occupancy rights. Therefore, the finding of the trial Court that the defendants are ryots entitled to occupancy rights, and could not be evicted, and that the suits for arrears of rent should also be filed in the revenue Court, cannot be sustained and is vacated, and the dismissal of both the suits with costs is set aside, and the suits remanded for fresh disposal after giving its findings on the other issues in the suits (like the arrears due etc., only the issues regarding occupancy rights and jurisdiction having been decided) and also on the new points raised in C.M.P. Nos. 2350 and 2351 of 1958 filed here and any new points raised and allowed there. The plaintiff will of course be free to oppose the above two petitions by filing counters, and adducing, arguments and other evidence. All parties can adduce relevant oral and documentary evidence at the remanded hearing. The appellant will get half the costs of these appeals from the respondents, the other half being disallowed, in view of the fact that the Full Bench decision resolving

the conflict in the views between the Benches was delivered only long after the filing of the appeals, and the lower Court's decisions in favour of the occupancy rights was based on a decision of this Court now held to be erroneous. The appellant will be granted a refund of the court-fees, paid in both the appeals.