

(1994) 09 SC CK 0149

In the Supreme Court Of India

Case No : Civil Appeals Nos. 33 To 37 Of 1990 With Nos. 29-32 Of 1990

Sri Vedaranyaswami Devasthanam

APPELLANT

Vs

A.C. Dharma Devi and Others

RESPONDENT

Date of Decision : 21-09-1994

Acts Referred:

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 44, 8

Citation : (1996) 7 SCC 467

Hon'ble Judges : N. Venkatachala, J;K. Ramaswamy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K. Ramaswamy and; N. Venkatachala, JJ.-These appeals arise from the common judgment of the High Court of Madras rendered in STAs Nos. 88-92 of 1979 and 51 of 1981 dated 9-8-1988. The Division Bench upheld the order of the appellate Tribunal under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, for short "the Act". The appellant-Institution had claimed ryotwari patta under Section 3 of the Act. The Settlement Officer and the Appellate Tribunal held that the appellant had since both melvaram and kudivaram rights, the presumption drawn under Section 44 supports their right. In addition, they also relied upon the entries in Inam Fair Register, for short the IFR, and they disclosed that the grant was in favour of the Institution. The names of the individuals had not been mentioned in the relevant columns and the respondents are not entitled to the ryotwari patta. But on appeal under Section 30, the Appellate Tribunal reversed the findings and held that Section 44 creates a rebuttable presumption since the evidence placed by the respondents shows that they had kudivaram right in the lands and they were entitled to the ryotwari patta under Section 8 of the Act. Accordingly, the patta was granted in their favour. As stated earlier when challenged in further appeal to the Special Tribunal, the Division Bench upheld the order of the Settlement Officer and the Appellate Tribunal and granted patta in favour of the respondents. Thus these

appeals by special leave.

2. It is contended for the appellant that under Section 8(2) of the Act the respondents would be entitled to a patta only on their showing that the lands had been transferred by way of a sale by the Institution in favour of the individuals under clause (ii) of sub-section (2) of Section 8. In case any individual is rendering service then the individual who renders the service or the transferee is entitled to the ryotwari patta in this case. No such plea or the documents have been placed on record to establish the same. Therefore, the Special Tribunal has committed grievous error in reversing the findings of the Settlement Officer and the Appellate Tribunal. Accordingly held that the appellant had both melvaram and kudivaram rights. We find no force in the contention. It is true that except in one case, no sale deed was placed on record. But the Special Tribunal had gone into the facts and found that the respondents were having kudivaram right in the lands what the appellant has been collecting was only a kisht that is revenue and that is being payable to the State. It is true that this Court in Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu¹ held that the entries in the Inam Fair Register are great acts of the State and coupled with the entries in the survey and settlement record furnish unimpeachable evidence. Construction of the relevant entries in the IFR is a question of law. On considering the entries, the Court can come to a conclusion whether the grant made was to the institution or to the individuals or for the maintenance of the Institution as mentioned in the relevant entries in the IFR. In that case on construction of the relevant entries, it was found that the grant was for the preservation and maintenance of the tank and tax-free inam land was granted for that purpose of maintaining the tank. Accordingly, it was held that the named individuals have no individual right except as trustees on behalf of the villagers for the proper maintenance of the tank. It is true that the Inam Fair Register has been placed before us. The relevant entries clearly show that the original grant was made for the maintenance of Vedaranyaswami Devasthanam temples. It was a permanent grant and no name of any individual is found in the relevant columns. It would appear from the record that the temple itself had treated the respondents and their predecessor-in-interest as those who had kudivaram right and the action taken was for the recovery of the arrears of the kisht by way of a sale of the kudivaram right. Therefore, the records would clearly indicate that the appellant had conferred kudivaram right in favour of the respondents and that what was collected from them was only a kisht (revenue) and it is not by way of a rent from them in exercising the kudivaram right of the appellant-Institution. Section 44, though refers to presumption that when it relates to the Inam granted for the benefit of the religious, educational or charitable institution or granted to any individual for rendering service to a religious, educational or charitable institution or for the purpose of rendering any other service, it shall be presumed, unless the contrary is proved, that the inam consists not merely of a grant of the melvaram in the land but also the kudivaram therein. It is only a rebuttable presumption that when the grant was in favour of the religious institution or the

individual rendering service to the religious institution, the appellant-Institution and the individual have both the melvaram and kudivaram interest therein. But it can be rebutted by contra evidence by the person claiming kudivaram interest in the land. As already seen in the kishit receipt there is specific reference to kudivaram right and that what was collected was a kishit (revenue) and not the rent as claimed now before us. On appeal, no evidence other than the entries the IFR is adduced. If the grant was for the maintenance of the institution, perhaps different considerations would have arisen. As stated earlier by conduct of the appellant in treating the respondents as having kudivaram interest in the land, the conclusiveness of the entries in the IFR have been displaced on the conduct of the appellant.

3. Under these circumstances, the Special Tribunal (High Court) was clearly right in its conclusion that the respondents had proved that they had kudivaram interest. Consequently, they are entitled to the grant of the ryotwari patta under Section 8. The appeals are accordingly dismissed. But in the circumstances without costs.

4. These appeals relate to the claim for ryotwari patta in respect of the building. It is now well settled law that the appeal under Section 30 does not lie against the rejection of the claim for grant of patta in respect of buildings. Accordingly, the High Court is right in its conclusion. The orders in appeals do not call for interference. The appeals are accordingly dismissed. No costs.