
(1965) 06 MAD CK 0002

In the Madras High Court

Case No : Writ Petition No's. 2064, 2088, 2089, 2125, 3040 of 1965, 437 and 446 of 1966

Srivelu Vaidyanathaswami Devasthanam and Others

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 24-06-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 31(2), 31A

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 3, 5, 7, 8

Citation : (1967) ILR (Mad) 283

Hon'ble Judges : Veeraswami, J; Natesan, J

Bench : Division Bench

Advocate : V. Vedcmtachari and T.M. Ghinnaiya Pillai, for the Appellant; N. Krishnaswami Reddi, General, K. Venhataswami and V. Eamaswami, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Natesan, J.—This batch of writ petitions under Article 226 of the Constitution relates to what are called Mohini grants which have been

notified under the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. The constitutional validity of the Act which is

challenged has been considered and upheld by us in the judgment in Subbachariar v. State of Madras (1967) 1 M.L.J. 206 just now delivered.

That does not preclude the examination of the question raised that these grants are not inams at all. The Petitioners are religious institutions in the

Tanjore District. Typical of their claim, Writ Petition No. 2064 may be taken up. The head of the Dharmapuram Mutt, Dharmapuram, Mayuram

Taluk, the hereditary trustee of Sri Velur Vaidyanathaswami Devasthanam, Vaitheeswaran Koil, is the Petitioner therein. The Petitioner is affected

by a notification made under the Madras Minor Inams Abolition Act XXX of 1963 with reference to this Mohini inam grant which, it is stated, is

assignment of right of the Government revenue over specified lands; (a) the right to the Government revenue of Rs. 862-0-11 on its lands in

Karkoil village, Karkoil vattam, Seerkali Taluk, covered by T.D. No. 602 for the purpose of spending the same for the religious services in the

Petitioner temple; (6) the right to the Government revenue of Rs. 202-8-7 on its lands in Karkoil village, Karkoil vattam, Seerkali Taluk, covered

by T.D. No. 603 for the purpose of pooja expenses of Sri Mullavanthaswami temple at Thirumullavasal, Seerkali Taluk, Thanjavur District; (c) the

right to Government revenue of Rs. 902-7-10 on its lands in Edakudi Thenpathi village in Edakudi Vadapathi vattam, Seerkali Taluk, covered by

T.D. No. 591 for the pooja expenses of the Petitioner devasthanam; (d) the right to the Government revenue of Rs. 1,137-5-7 on its lands in

Keezhaveli village, Edakudi Vadapathi vattam, Seerkali Taluk, covered by T.D. No. 590 for the pooja expenses of the Petitioner devasthanam;

(e) the right to the Government revenue of Rs. 1,220-0-6 on its lands in Santhapu-thur village, Edakudi Vadapathi vattam, Seerkali Taluk, covered

by T.D. No. 594 for the pooja expenses of the Petitioner devasthanam ; (f) the right to the Government revenue of Rs. 885-10-2 on its lands in

Kazhi Kavalapuram village, Edakudi Vadapathi vattam, Seerkali Taluk, covered by T.D. No. 595 for the pooja expenses of the Petitioner

devasthanam ; (g) the right to the Government revenue of Rs. 504-14-8 on its lands in Vaithyanathapuram village, Edakudi Vadapathi vattam,

Seerkali Taluk, covered by T.D. No. 562 for the pooja expenses of the Petitioner devasthanam ; (h) the right to the Government revenue of Rs.

193-9-8 on its lands in Mallikudi attached to Punganur village, Punganur vattam, Seerkali Taluk, covered by T.D. No. 565 for the pooja expenses

of Sri Sivalogathyagarajaswami Devasthanam at Achalpuram ; (i) the right to the Government revenue of Rs. 439-13-1 on its lands in Varavugudy

attached to Vadakuveli village, Punganur Vattam, Seerkali Taluk, covered by T.D. No. 566 for the pooja expenses of Sri

Sivalogathyagarajaswami Devasthanam at Achalpuram; and (j) the right to the Government revenue of Rs. 557-9-0 on its lands in Athukudi village,

Dharamadhanapuram vattam, Mayuram Taluk, covered by T.D. No. 1132 for the pooja expenses of Sri Vedaranyeswaraswami Temple,

Vellalarkoil,

2. The case of the Petitioner is that the assignment of the revenue in these cases was in lieu of money allowance called tasdik which the

devasthanam was receiving from the British Rulers in continuation of similar payment from the Rajas of Thanjavur. It is stated that on objection

taken in England to money allowances in favour of Hindu religious institutions, these money allowances were substituted by assignment of land

revenue of value equal to the money allowances plus ten per cent to cover vicissitudes of season and cost of collection. These revenue assignments

were called Mohini grants and were recognised and confirmed during the inam settlement. Inam title deeds were also issued. The lands of which

the land revenue was assigned had already belonged to the institution. It is stated in the affidavit that the grant of land revenue is not in respect of

any inam land but on lands which were held on ryotwari tenure. When in the first instance assessment was levied under Madras Inams

(Assessment) Act LX of 1956, on objection being taken that the assignment was of the land revenue, that it related to service tenure and that it

was exempted by proviso to Section 3 of the Act the assessment was cancelled. The inam register extracts in respect of these Mohini inams which

are produced gives the following details: tax free: the grant is not an assignment of land but assignment of land revenue payable to Government

subject to the payment of additional assessment direct to Government on account of extra cultivation fassal or tirva jasti, water tax, etc. Under the

column by whom granted and in what year it is stated that it was granted by the Government in Fasli 1273 that is, 1863-64. It is further found

therefrom that revenue was assigned in lieu of ready money allowance.

3. In the counter affidavit filed on behalf of the State, it is not controverted that the lands in question of which the revenue is assigned are held under

ryotwari tenure. Apart from the usual general denial, it is pointed out that if the contention of the Petitioner is that the grants in question are not

minor inams within the meaning of the Act he should resort to the statutory remedies provided under the Madras Inams (Supplementary) Act,

1963 (Madras Act XXXI of 1963).

4. It is admitted that all the inams in question are Dumbala inams, tax free, and they are not assignment of lands but assignment of land revenue but

that it is asserted that they are only land inams. The history of Mohini grants is found discussed in the Secretary of State for India in Council v.

Vaithilinga Pandara Sannadhi Avergal (Appeal Nos. 40, 41, 42, etc., of 1936) by a division Bench of this Court consisting of WADSWORTH J.,

and PATANJALI SASTRI, J., (as he then was). Referring to the early money allowances that had been made by the East India Company, it is

observed that the origin of these allowances is obscure, that they generally represented endowments granted to the various temples in pre-British

days, and that many of these allowances were in lieu of temple lands resumed by the East India Company. When the Madras Government wanted

to withdraw from all interference with the temples and places of religious resort, the Government of India insisted on the transfer to the temples of

the lands recognised as temple lands and asked for further information regarding those cases in which the original temple lands could no longer be

traced and in respect of which money payments were being made from the treasury in lieu thereof, with a view to commutation of these payments

into assignments of revenue. It is noticed in the judgment that from the records produced in the case many of the allowances represented ancient

resumptions in respect of which it was found impossible to trace the original lands, so that some compensation in another form was necessary. It is

further noticed in the judgment:

The Collector was unable to trace the origin of these grants; but he points out that from the commencement of the British rule in Thanjavur, these

and other connected allowances have always been recognised as a charge upon the revenue of the district.

5. The minutes in the matter of these grants show that the assignment of land revenue in question was made as the equivalent of specific money

payments and the rights of the assignee should be restricted to the specific area in which the amount of land revenue has been granted and that any

extension of cultivation beyond such specific areas should be treated as liable to the payment of assessment to Government. In his report, dated

5th May 1891 in respect of the resettlement of the Thanjavur District, the Deputy Commissioner remarks thus:

Mohini inams situated within Government villages. These so called inams are assignments of revenue to temples. The pattadars simply pay

assessment to temples instead of to Government and for second crop and tirva jasti they are dealt with like Government patta lands at annual

Jamabandi as is done with other inam lands.

6. It is observed in the judgment that the whole intention appeared to be to give to the temples the right to collect revenue approximately equivalent

to the cash allowance till then enjoyed with compensation for the cost of collection and a small margin to cover seasonal fluctuations. It was held in

one of the appeals that the grant was not of the specified lands on the ordinary minor inam tenure, implying the surrender in toto of the

Government's right to revise the assessment. The grant was clearly, it is stated, a grant of the present revenue on the specified lands, the

Government retaining the right to future increments of revenue and the right to impose assessment on lands within the villages not covered by the

specific terms of the assignment. The appeals in those cases arose when the Governments' right to resume and resettle these Mohini inams

restoring the cash allowances was questioned.

7. One thing emerges from the facts which have been placed before us and it is that these assignments of revenue were in lieu of existing cash

allowance. The money allowances represented ancient resumptive in respect of which the original lands could not be traced and these cash

allowances were substituted by assignment of equivalent revenue from lands with additional ten per cent as collection charges to provide for

vicissitudes of season and cost of collection. It is specifically averred in the affidavit that the lands are held under ryotwari tenure and this has not

been controverted by the State in the only counter affidavit that has been filed in this batch of cases.

8. On these facts the first contention on behalf of the Petitioners is that there is no such thing as inam lands in these cases. Inam has been defined in

Madras Act XXX of 1963 as a grant of the melwaram in any inam land or a grant of both the melwaram and kudiwaram in any land which grant

has been made, confirmed or recognised by the Government. Assuming that it could be said that there is a grant of melwaram, the contention is

that the melwaram is not an inam land. The lands are held under ryotwari patta. Our attention was drawn in this connection to Section 5 of Madras

Act XXXI of 1963 which provides for determination of the question whether any

non-ryotwari area is or is not an existing inam estate or not. The declaration provided for under the section is whether the non-ryotwari area specified is a minor inam or one or other of the inams which come under Madras Acts XXVI and XXX of 1963. It is submitted that it follows from this that as the land revenue is in respect of ryotwari land, it could not be considered to be a minor inam as contemplated under Madras Act XXX of 1963. Going through the several provisions of the Act it could, in our view, be properly inferred that the minor inam dealt with under the Act should be a grant of both the warams but for the fact that the provisions of Section 8 militate against such conclusion. Section 7 of Madras Act XXX of 1963 refers to inam land as any land comprised in a minor inam. When the grant is only of melwaram, it is not appropriate to say that the land is comprised in the minor inam. The vesting section, Section 3(b) also would lead to a similar conclusion. It reads: every minor inam including all communal lands, etc. The inam that vests must ordinarily be one that is capable of including waste lands, porambores, etc. May be that the draftsman of the Act has adopted the customary phraseology found in inam title deeds which had raised doubts and necessitated Madras Act VIII of 1869 providing that nothing contained in any title deed shall be deemed to confer on any inam holder any right to land which he would not otherwise possess. No doubt in one sense even where the grant is of the revenue only, the revenue being derived from the land, in a loose way and straining the language the land could be said to be comprised in an inam grant.

9. It is contended for the Petitioners that the mere fact that the inam commission has issued title deeds or the assignments of the land revenue is referred to as inam grant, will not make it an inam, if in essence it is not an inam. It is argued that the assignment of the revenue being in lieu of cash allowances, the element of gift or favour or benefaction is wanting to make the grant an inam. Our attention is drawn to the observations in

Sellappa Goundan and Others Vs. A. Bhaskaran and Others, :

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 inamdars under the

original grant.

10. It is argued that in fact there was no inam earlier for consideration at the time of the inam settlement. The Government had been, instead of discharging the obligation of returning to the temples the lands that had been taken from them, giving them money allowance. This money allowance was substituted by a fixed revenue grant. Therefore, it is argued that these are not inams at all. It is contended that in substance it was assignment of money by the Government. They had assigned the right to collect the revenue in discharge of their obligation. It is, therefore, submitted that to acquire this right treating it as inam will be in effect taking away money, and that there could be no acquisition of money under the Constitution.

Learned Counsel in this connection drew our attention to the observations in *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of*

Darbhanga and Others, . MAHAJAN J. (as he then was) observed at page 943 in relation to acquisition of arrears of rent:

Taking money under the right of eminent domain, when it must be compensated in money afterwards is nothing more or less than a forced loan.

Money or that which in ordinary use passes as such and which the Government may reach by taxa-tion and also rights in action which can only be available when made to produce money, cannot be taken under this power.

MUKHERJBA J., observed at page 961:

It is said by the learned Attorney-General that the subject matter of acquisition in the present case is not money but choses in action. It seems to me that there is no difference in principle between them because a chose in action can be available to the acquiring authority only when it is made to produce money ; otherwise it is useless altogether.

11. In our view it is unnecessary to go so far and consider whether there could be an acquisition of these grants in the circumstances of the case for

the reason that at the origin they are just cash allowances made by the State. Article 31(2) has undergone significant changes since the *The State of*

Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, and besides there is Article 31-A. In our opinion the un-controverted

allegation that the land revenue relates to lands held under ryotwari tenure and the further fact that the assignment of the revenue coming for the first

time during the inam settlement was in lieu of cash allowances to which the

temples were entitled and which have been charged on the State

treasury are sufficient to take these so called inams out of the category of minor inams which would fall under the provisions of the Madras Inams

Abolition Act. Whether the State could reach these grants by any other Act does not arise for consideration now. It is stated on behalf of the

Petitioners that as the lands are held under ryotwari tenure, no application would lie under Madras Act XXXI of 1963 and nothing has been

suggested on behalf of the State as to why in the circumstances these petitions should not be allowed.

12. The writ petitions are, therefore, allowed and the rules nisi thereon made absolute. No costs.