

(1965) 09 SC CK 0017
In the Supreme Court Of India
Case No : Appeal (civil) 446 of 1963

State of Madras

APPELLANT

Vs

P. Govindarajulu Naidu

RESPONDENT

Date of Decision : 23-09-1965

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(2)
Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 2,
27, 28, 3, 31

Citation : AIR 1966 SC 969 : (1966) 1 SCR 915

Hon'ble Judges : R. S. Bachawat, J;K. Subba Rao, J;J. R. Madholkar, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Subba Rao, J.—This appeal by certificate raises the question whether the village of Mothirambedu is a Zamindari estate under the Madras Estates [Abolition and Conversion into Ryotwari] Act 1948 [Madras Act XXVII of 1948], hereinafter called the Act.

2. The facts may be briefly stated. Mothirambedu village is one of the shrotriem villages in the Chingleput district in the state of Madras. The respondent purchased the same from one P. Anathapadmanabacharlu under a sale deed dated July 10, 1946, for a sum of Rs. 26,000/- and was in possession and enjoyment thereof. On December 12, 1950, the Government of Madras issued a notification under s. 3 of the Act taking over the said village as a Zamindari estate. The Government took possession of the same on January 3, 1951. On March 15, 1954, the respondent filed O. S. No. 22 of 1954 in the court of the Subordinate Judge, Chingleput, against the State of Madras for a declaration that the said notification of this village as Zamindari estate under the said act was illegal and void. In the plaint he claimed that the said village was not an estate within the meaning of the Madras Estates Land Act and, therefore, it did not vest in the State. But that plea was subsequently given up and nothing need be said

in that regard. The State filed a written-statement asserting that the said village formed part of Tirumazhy Zamindari, that it was separately registered in the office of the Collector and that, therefore, 'it was a zamin estate within the meaning of the said Act.

3. The learned Subordinate Judge, Chingleput, held that the suit village was a zamin estate and that, therefore, the said notification was legal and binding on the respondent. On appeal, the High Court of Judicature at Madras held that it was not proved that the said village was a zamin village but it was a whole inam village. On that finding, it granted the plaintiff a declaration that the notification of the said village as a zamin estate under Act was illegal and void, as the said village was a whole inam village. Hence the appeal.

4. Learned counsel for the state contended that the said village was included in the assets of the Zamindari at the time of the permanent settlement, that it continued to be a part of the said estate till it was abolished under the Act.

5. Mr. T. V. R. Tatachary, learned counsel for the respondent, on the other hand, argued that the said village was granted as a shrotriem before the permanent settlement to a person holding the office of a Nattuvar, that though the said village was included in the asses of the Zamindari, the pre existing tenure was not disturbed, and that the grantee and his successors continued to hold the village as an under tenure from the Zamindar, as by reason of the permanent settlement the Zamindar became an intermediary. In short, his contention was that the said village was an under tenure estate falling under s. 3 [2] [e] of the Madras Estates land Act and that in any view, it had not been established that it was a zamin village.

6. Before we advert to the facts of the case it will be convenient to notice some of the aspects of law relevant to the said facts.

7. The Madras Estates land Act, 1908.

8. Section 3. (2) "Estate" means-

(a) any permanently settled estate or temporarily settled Zamindari.

(b) any portion of such permanently settled estate or temporarily settled Zamindari which is separately registered in the office of the Collector;

(c).....

(d) (As it stood before the Amending Act XVIII of 1936) of 1936). Any village of which the land revenue alone has been granted in inam to a person not owning the kudivaram thereof, provided that the grant has been made, confirmed or recognized by the British Government or any separated part of a village.

(After the Amending Act XVIII of 1936).

any inam village of which the grant has been made, confirmed or recognized by the British Government, notwithstanding that subsequent to the grant, the

village has been partitioned among the grantees or the successors in title of the grantee or grantees.

(e) any portion consisting of one or more village of any of the estates specified in clauses [a], [b] and [c] which is held on a permanent under tenure.

The Act

9. Section 2. (3) estate means a Zamindari or an under tenure or an inam estate.

(7) "Inam estate" means an estate within the meaning of section 3, clause [2] [d], of the Estates Land Act, but does not include an inam village which became an estate by virtue of the Madras Estates land [Third Amendment] Act, 1936.

(15) "Under tenure estate" means an estate within the meaning of section 3, clause [2] [e] of the Estate Land Act.

(16) "Zamindari estate" means--

(i) an estate within the meaning of section 3, clause 2 [a] of the Estate Land Act, after excluding therefrom every portion which is itself an estate u/s 3, clause 2 [b] or 2 [c] of that Act; or

(ii) an estate within the meaning of section 3, clause 2[b], of the Estate land Act, after excluding therefrom every portion which is itself an estate u/s 3, clause 2 [e], of that Act.

10. The aforesaid provision may be summarized thus: The Madras Estates land Act recognizes for the purpose of the Act 5 categories of estates. The Act grouped the said 5 estates under three categories, namely, zamin, under tenure and inam estate. The Estate defined in cls. (a), (b) and (c) of s. 3 (2) of the Madras Estates land Act, excluding therefrom an under-tenure estate, are classified as zamin estates. An estate falling under the definition in 3 (2) (d) of the Madras Estate Land Act, excluding therefrom an inam estate which became an estate under the Madras Estate (Third Amendment) Act, 1936 is described as an inam estate under the Act. An estate under the definition of s. 3 (2) (e) of the Estate Land Act. An estate under the definition of the under tenure estate estate under the Act. It will be noticed at this stage that though a village is physically a part of a Zamindari if it is held on a permanent under-tenure, it is excluded from the definition of a zamin estate but included under the definition of an "under-tenure estate". The result of this classification is, an inam village held under a permanent under-tenure is not a zamin estate. A village can be held under a permanent under-tenure whether that village was the subject-matter of a pre-settlement grant or a post-settlement grant. To illustrate: take a village which was granted permanently to an inamdard before 1802 by the British Government. At the time of the permanent settlement the said village was included in the permanently settled estate. The effect of that was that the inamdard who was holding the village under the Government continued to hold the same under the proprietor. Take another illustration: after the permanent settlement the

proprietor made a permanent grant of the whole inam village to an inamdar. The inamdar held the village under the zamindar. In either case the village was held under the proprietor of the permanently settled estate. The proprietor, who is liable to pay pish kush to the Government, is the tenure-holder. He is the intermediary between the inamdar and the Government; that is why the inamdar is described as under-tenure holder. It is, therefore, clear that to constitute an under-tenure it is not material whether the grant was a pre-settlement or a post-settlement one, but what is important is, in whom the reversionary interest rests. That reversionary interest may rest in the proprietor either because at the permanent settlement the inam was included in the assets of the zamindari or because he himself was the grantor of a permanent under-tenure. This aspect of the law was considered in two decisions of the Madras High Court. Where a pre-settlement Mokhasa village was included in the assets of the zamindari it was held that the village was held under a permanent under-tenure within the meaning of s. 3(2)(e) of the Madras Estates Land Act: see *Gopiseti Veeraswami and Others Vs. Sagiraju Seetharama Kantayya, , and Narayanavwami Bahadur v. Boda Thammayya* (1930) M.W.N. 945 This legal position will be material when we consider the documents filed in this case.

11. It may be mentioned that the distinction between zamin estate, inam estate and under tenure estate made under the Act is relevant, inter alia, for the purpose of payment of compensation. The basis on which compensation payable in respect of an inam estate is to be calculated would yield a larger measure of compensation than that in respect of a zamin estate. In regard to an under tenure estate, if the under tenure was created prior to the permanent settlement, the compensation payable would be on the basis adopted for zamin estate with certain deductions; if it was created subsequent to the permanent settlement, the compensation would be on the basis adopted for a zamin estate. In the present case, as the inam was created prior to the permanent settlement, if the contention of the respondent was correct, he would get a higher compensation. That is the reason for this dispute [See Sections 27, 28, 31, 32, 35, 36 and 37 of the Act].

12. It will also be useful to know, as we said for appreciating the evidence who is a Nattuvar, nattuvar or Natwar is described in the Manual of Chingleput District thus, at p. 244:

" The first and highest officer was the " Natwar" or headmen of a Nadu, or circle of village, the cultivation of which he supervised on the part of the Government. These officers were possessed of considerable privileges, and were men of great dignity and reputed wealth. They appear to have been lost sight of after the territory was made over to the British. The Nabob recognised or ignored them, deprived them of their offices, or restored to them their privileges, as they resisted or fell in with his exactions, or as his capacity was sharpened by the urgency of his necessities. Such a system had demoralized what was really a very useful body of men, who were, moreover, eager to be relived from the

consequences of the ascendancy of the dubashes, which had reduced them to the condition of ordinary ryots. Mr. Place took advantage of the disposition they now showed to return to the discharge of their duties, to which he therefore restored them under certain, guarantees for their good behaviour."

" The Natwars" were a very ancient body of officials."

13. It will be seen from the said extract that the office of Nattuvar was an important one, that it possessed of considerable privileges, that it fell into evil days during the period of the Nawabs, and that during the British rule Mr. Place, the then Collector of Chingleput, restored the office of Nattuvar under certain guarantees for the good behaviour of the Nattuvars. It appears that at the time of permanent settlement in the Chingleput District, which was then described as a Jagir, the office of Nattuvar was abolished but the Nattuvars were allowed to retain the shrotriem village granted to them. This will appear from the appendices to the Report of the Estates Land Committee, at pp. 228 to 253. Learned counsel for both the parties agreed that the extracts given in the statement of case of the respondent are correct. As the report is not available to us, we cite the extracts from the said statement of case.

14. Paragraph 66 of the said Appendices:

" The permanent settlement of the land revenue having rendered unnecessary, all the subordinate officers of revenue between the Collector and the Curnums, the general instruction directed that those superfluous offices including that of Nattuvar should be abolished. The nature of the powers exercised under the duties attached to that office furnished abundant reason for annulling it but the individual persons now holding it have claim to indulgence, and it is our duty to submit their pretensions to your Lordship's consideration..... They have been considered to be honorable stations and length of possession has annexed to them the idea of property although the emoluments of an office ought under ordinary circumstances to cease with the discontinuance of the office itself, yet it will be just under the stated consideration, to grant a compensation in the case of the Nattuvars adequate to the loss sustained by the immediate incumbents..... We recommend that your Lordship in Council should confer on them, as an act of indulgence, the possession of their Shrotriem lands tenable under a Purnwanah of Government,"

15. Paragraph 67 : Although the Nattuvars who were appointed under the authority of Government during Mr. Place's management of the Jagheer cannot plead length of service, we yet recommend that they might be included in this arrangement in consideration of the assistance rendered by them in the lease of the lands at that period of time.

16. Paragraph 74 : The Shrotriem lands in general are so connected with the Government lands that it has been deemed expedient to provide for the collection of the shrotriem rent through the channel of the Proprietor of the estate in which the shrotriem lands are situated and to provide through the same

channel for the collection of the commuted marahs. The Zamindaras will, therefore, be entitled [according to usage] subject always to prosecution for the abuse of it to call in the aid of the inhabitants of the shrotriem lands for purposes for which it has been customary to render such assistance.

17. The following extracts from the Minutes of consultation in the Revenue Department dated April 13, 1802, may be useful :

" The subject of the Nauttuwars is familiar to the Board. The nature of the office and its connection with the administration of the Revenue has been discussed at length on the records of the Government. A reference to this discussion must demonstrate that the office can no longer be useful. The superior advantages which the Nauttuwars have acquired by the enjoyment of the high warum and of mauniams, and the ground of interference which they are calculated to afford with the rights of the proprietor, render it expedient that the motives of such an influence should be removed together with the office. The Board, therefore, authorise the abolition of the office of Nauttawar and the resumption of the emoluments attached to the performance of the duties of that office.

18. At the period, however, of conferring such extensive benefit on the body of people as they will receive from the establishment of a system of permanent revenue and of judicature, the Board are disposed favourable to consider the claims of the present incumbents in the office of Nauttawar. They concur with the Commission that it will be just, under the estates circumstances, to continue to the Nauttawars their shrotriem lands because they have been considered to be honourable stations and length of possession has annexed to them idea of property.

19. It will be seen from the said extracts that the Commission appointed to of into the question of the abolition of the office of Nattavaras recommended that the office should be abolished but the Government should confer on the incumbents the possession of their Shrotriem lands under a purvana. The Revenue Board accepted the recommendation of the Commission; it agreed to allow the Nauttawars to continue to have possession of their Shrotriem lands. It is, therefore, clear that the shrotriem lands were given permanently to Nattuvars by the State, that at the time of permanent settlement the tenure was continued and that their inclusion in the estate only effected a transfer of the reversionary interest from the state of the proprietor.

20 .With this background let us look at the documents filed in the case. The earliest document on record is Ex. 7, the certified copy of cowle granted by Mr. Lionel Place, Collector of Honorable Company's Jageer to Rangasami Mudali dated December 10, 1796. As it is an important document, we shall read it:

"Cowle granted by Lionel Place Esq., Collector of the Honorable Company's Jagheer to Rangaswamy Moodaly.

21. Whereas the village of Moderambedu and Madavapoondy in the district of

Poonamalle from neglect and want of mirasdars being in a desolate and uncultivated state producing nothing to the circar. Rangaswamy Mudali Nauttawar of the said district having agreed, provided the meerassee of the said village be conferred on him, to clear and render them productive.

22. I do therefore hereby confer on Rangaswamy Mudaly and his heirs, the meerassee of the said villages, to continue in the enjoyment of the same, so long as they carry on a proper cultivation, pay all just dues, and are obedient to the circar.

23. Date this 10th day of December in the year one thousand seven hundred and ninety-six.

[Signed] Lionel Place Collector."

24. The genuineness of this document is not in question. It was filed by consent. This document discloses that Rangaswamy Mudali was a Nattuvar in the district of Poonamalle. As the village of Mothirambedu, with which we are now concerned, was in a desolate and uncultivated state for want of mirasdar, the mirasi of the said village was granted permanent to Rangaswami Mudali and his heirs. In Wilson's Glossary, the following meaning to the Tamil expression "mirasi" is given :

"Inheritance inherited property or right; the term is used, especially in the south of India, to signify lands held by absolute hereditary proprietorship under one of three contingencies".

25. According to Wilson, mirasdar means the holder of hereditary lands of office in a village. It is, therefore, clear that under this document the said village of Mothirambedu was given to Rangaswami Mudali, who was a village officer, in absolute hereditary proprietorship. The village was given under a permanent hereditary grant, subject to, inter alia, the grantee paying all just dues to the Government. This document is couched in clear and unambiguous terms and under it the permanent inam was granted to Rangaswamy Mudali subject to his payment of dues.

26. Exhibit B 2 is described as "Trimishy Zamindari Statement" in regard to waste and unproductive lands. It is not dated. It relates to Mothirambedu village and another village. Under the heading remarks, the following statement are found:

" Watered by Trimishy tank, New Shrotriem to Nautyavalappa Moodaly proposed to be resumed as per Order of the Board, dated 2nd October 1800. Another village Alatoor is included with these two and the rent is paid on the whole and the villages are watered by the trimishy tank. Rented for 10 years to Naut Rangaswamy Moodaly 5 of which are expired. The rent raised from 10 pagodas the present Fasli to 25 Pagodas the last year by the lease. Watered by the Trimashe tank".

27. Learned counsel or the State contends that this document shows that Ex.-A-7 was not given effect to and that Rangaswamy Mudali was only a lessee for 10 years. As we have stated earlier, this statement does not bear any date, though the internal evidence discloses that it came into existence after October 2, 1800. This is not signed by any officer. We do not know on what material the said observations were made and on what occasion this document was prepared and by whom and whether this was acted upon at the time of permanent settlement. We cannot draw any presumption on an unsigned statement which does not even bear a date. This must, therefore, be ignored.

28. Exhibit B-1 is the copy of the Kabuliat executed by Venkiah, the proprietor of the Zamindari of Tirumishi at the time of permanent settlement of the estate in his favour. The sanad is not produced. It shows that the Zamindari consisted of 57 purchased villages and 8 shrotriem villages but the names of the Shrotriem village are not given. This document ex facie does not show that Mothirambedu was one of the village that were the subject matter of permanent settlement. The learned counsel for the state relied upon the Chingleput Manual wherein a statement showing the particulars of several tenures other than ryotwari in the District of Chingleput is given. Dealing with Saidapet Taluk under the heading "Zamindaries", Mothirambedu village is mentioned; and under the heading inam villages enfranchised or unenfranchised, the said village is not shown. From this it is contended that this village was a part of the Zamindari and that it must have been one of the shrotriem villages shown as included in the zamindari of Tirumishi in the Kabuliat executed by Venkiah. Be that as it may, the fact that Shrotriem villages have been shown as villages of the zamindari is not decisive in the context of the Act, as permanent under-tenure villages, as explained earlier, have been specifically excluded from the definition of zamin estate.

29. Exhibit B-3 does not bear any date. It contains the names of the Zamindars in the Madras Presidency. We do not know for what purpose this document was prepared. Under the heading names of estates, Mothirambedu is given. The name of P. Ananthapadmanabhan is shown under the heading Name of the present holder. Apart from the heading, the expression estate is appropriate in the context of a Zamindari as well as a village held under a permanent under-tenure. The honorific title Zamindars adopted by a particular inamdar does not make him a Zamindar and his land does not cease to be an inam. It is their an inam or not under the provision of the Act.

30. Exhibits B-4 and B-5 are the extracts from the Inam Fair Register of the years 1862 in respect of Mothirambedu village. They deal with some minor inams of small extents. It may be mentioned at this stage that these registers were prepared in connection with the inam settlement. They deal with pre-settlement inams only, which were not included in the assets of the zamindari. Presumably these minor inams in Mothirambedu village were pre-settlement inams not so included and, therefore, they were the subject-matter of the enquiry and were eventually confirmed. But it is said that the fact that the minor inams were the

subject-matter of the settlement but the village itself was not settled thereunder indicates that the village was a part of the zamindari. But, as we have pointed out earlier, the village, subject to the subsisting tenure, was included in the zamindari and, therefore, there was no scope nor occasion for its being the subject-matter of inam settlement.

31. Exhibit A-2 is the title deed granted to Narasimhachariar and 7 others by the Inam Commissioner, Madras dated November 24, 1869. The title deed was issued to Narasimhachariar in respect of 2 acres and 39 cents of wet land pursuant to order made in the Inam Register. But the said 2 acres and 39 cents of wet land is described as situated in the Jari inam village of Mothirambedu taluk of Saidapet District. According to Wilson's Glossary Jari inam means A grant of land or other endowment still in force, not resumed. This recital, therefore, support the conclusion that the inam of the village of Mothirambedu taluk was still subsisting, though the right of ultimate reversion vested in the Zamindari.

32. Exhibit B-6 is "B" Register of Sriperumbudur Taluk of Chingleput District. It contains a list of the inam villages. Mothirambedu minor inam is shown in the list as it should be. Mothirambedu village has no place in that list as it was included in the Zamindari.

33. The respondent placed before the Court various sale deeds to support his title to the said village. Under Ex. A-6, a sale-deed dated September 2, 1919, Haji Usman Sahib sold the exclusive Miras of Mothirambedu to Rangachariar. In the sale deed Mothirambedu is described in different places as Miras Mitta, zamin village, Mothirambedu zamin village and Mothirambedu Ega Bhoga Miras zamin. Ega Bhogam means in Tamil possession or tenure of village land by one person or family without any co-sharer. No doubt the word zamin is ordinarily used to denote the estate of a Zamindar, that is the proprietor under the permanent settlement. But the expression Zamindar is also adopted by some of the inamdars as an honorific term. A mere popular description of an undertenure village as a zamin does not make it a zamin estate under the Act, if it is not one in fact. Indeed, the document shows that in some parts, for instance in schedule A, Mothirambedu has been described as Ega Bhoga Miras Mothirambedu zamin village and in Schedule B, Melmananibedu village is ' described as Shrotriem Melmanambedu village, whereas in the preamble to the document Mothirambedu is described as Miras of Mothirambedu. ind Me'manambedu, as Zamin Melmanambedu. This shows that the character of the village has not been described with any legal precision. What is more, the character of this village was in, dispute in a suit between the zamindar and the tenants in the year 1921. That suit ultimately went up to the High Court and a Division Bench of the Madras High Court disposed of the appeal on November 23, 1927. The judgment is marked as Ex. A-4. Therein the High Court pointed out that the zamindar, who was the appellant, did not produce the sannad nor did he file any old records relating to the zamindari on the ground that they were not available in the

Collector's office. The only evidence adduced to support his contention was the fact that in regard to the village fixed assessment was paid from the year 1856 onwards, and that it was referred to in certain Government registers as zamin village. The High Court accepted the finding of the Subordinate Judge that it was not a part of the zamindari. Except the certified copy of the Kabuliat executed by Venkiah, the then zamindar, which does not include this village and the unsigned statement alleged to have been filed in the permanent settlement proceedings, which is not proved no further material evidence has been placed in the present proceedings. We do not see any justification to take a different view from that accepted by the High Court in the year 1927.

34. From the discussion of the aforesaid evidence, the following facts emerge : In 1796 Mr. Lionel Place, the then Collector of the Honorable Company's Jagheer, granted a cowle to Ranga-swamy Mudali, who was occupying the office of a Nattuvar, conferring on him the mirasi of Mothirambedu village and another village permanently, subject to his paying all just dues. At the time of the making of the permanent settlement in Chingleput District, which was then described as a Jagir, it was decided by the Company to maintain Shrotriem, i.e., grants made to Nattuvars, including those granted by Mr. Lionel Place, and realise their dues through the instrumentality of the zamindar. This policy was implemented by including the shrotriems in the zamindari by transferring the Company's ultimate reversionary rights to the zamindar. The result was that the shrotriem tenure in the hands of the Nattuvars continued after the permanent settlement as it existed prior to it. That is the reason why some times the village was described as zamin village and sometimes as Jari Inam village. That is also why it was not the subject-matter of permanent inam settlement. But the fact remains that Shrotriem tenure continued in the hands of the Nattuvar and his successors-in-interest, after the permanent settlement as it was before the said settlement. The tenure under the Government became an under-tenure under the zamindar, as the zamindar intervened between the Government and the Nattuvar, As the village is held under a permanent under-tenure, it falls squarely under the definition of s. 3(2)(e) of the Madras Estates Land Act and is, therefore, an estate thereunder and hence it is an under-tenure estate. As the under-tenure estate is excluded from the definition of "zamin estate", the notification issued by the Government on the basis that it is a zamin estate is void and the High Court rightly declared it as void.

35. In the result, the appeal fails and is dismissed with costs.

35. Appeal dismissed.