

(1954) 10 MAD CK 0016
In the Madras High Court
Case No : Writ Petition No. 254 of 1953

Sundaram Pillai

APPELLANT

Vs

The State of Madras and others

RESPONDENT

Date of Decision : 27-10-1954

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1954) 10 MAD CK 0016

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : B.V. Viswanatha Aiyar, for the Appellant; Ismail for the Special Govt. Pleader, Messrs. G.R. Jagadisan and A. Sundarum Aiyar, for the Respondent

Final Decision : Allowed

Judgement

Rajagopalan, J.—The question was whether Karungulam village in Sivaganga Taluk, Ramanathapuram District, was an "Inam estate" as defined by S. 2 (7) of the Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Act XXVI of 1948). In the proceedings taken summate by him the Assistant Settlement Officer held it was not an imam estate. On appeal by the riots to the Estates Abolition Tribunal, by a majority of 2 to 1 it held that it was an in am estate. It is the validity of the decision of the Tribunal that has been challenged in this application under Art. 226 of the Constitution, for the issue of a writ of certiorari to quash that order. The petitioner is the owner of 40 out of 88 shares into which the inam grant was divided subsequent to the grant. It was common ground that the grant of inam was in 1773. The grant was confirmed by the Inam Commissioner in 1864. Neither the original grant nor a copy of it was filed before the Tribunals below or before me. An authenticated copy of the grant was produced before the authorities during the Inam Settlement in 1860. The terms of the grant and the subsequent history of the village up to the date of the proceedings before the Inam Commission have to be gathered from the extract from the Inam Fair Register, Ex. A. 1, and the copy of the Inam statement Ex. A.

2. In addition to the entries in the several columns of the Inam Fair Register there was a fairly full historical memoir of the village in Ex. A. 1.

2. It is clear from the historical memoir in Ex. A. 1 that what was granted in 1773 was the whole village of Karungulam, though what was confirmed in 1864 by the Inam Commissioner was limited to two hamlets of that village, Sausage and Pettanandal. Two other hamlets of Karungulam had passed into the possession of the Zamindar of Savaging sometime after 1819. The area of the grant confirmed was shown in Ex. A. 1 as 608" 13 acres. The details of the cultivated and cultivable lands, on which was based the estimate of assessment, worked out to 527-50 acres, that is, 218-50 acres of wet and 309 acres of dry lands. Ex. A. 1 recorded that the village was held then by the Inamdars in 88 vritties. The inamdars in possession were either the descendants of the original grantees or alienates from them. It should also be clear from Ex. A. 1 and Ex. A. 2 that at the time of the confirmation of the grant in 1864 no one other than the Invaders claimed any interest, in any of the lands (measuring 608" 13 acres) the inam grant of which was confirmed. Though I have set out these details of the confirmation of the grant in 1864, the scope of the grant has to be determined with reference to the terms of the original grant in 1773, and that grant was of the whole village of Karungulam.

3. Ex. A. I set out the circumstances under which the grant was made in 1773.

The said minister (Salar Jung) issued a Takid to the Founder Mallary Rao to grant the Dbarmasanam to any Brahmin who will undertake to clear jungles and bring lands under plough. The Founder granted the village to Vanuatu Satyr and eleven other Brahmins entered in column 13.

4. It was further recorded in Ex. A. 1

The authenticated copies of Salar Jung's Takid and of Mallary Bow's patta to the Brahmins in A. D. 1775 was produced by the Mahajacams. The original documents are reported to be in the civil Court. The patta of Mallary Row of A. D. 1773 contains the boundaries of the village.

5. The only reasonable inference from the recitals set out above is that the grantees had no interest of any kind in the village before the grant. It was not the case of any one either in the proceedings before me that the antecedent to the grant, the grantees had any interest in any of the lands in the village. Another irresistible inference is that no portion of the village of Karungulam was under cultivation in 1773. In the absence of any indication contra in the terms of the grant as summa raised in Ex. A. 1, and in the face of the avowed purpose of the grant, it should follow that there was no one in 1773 who had any interest in any of the lands in that village. When such a block of uncultivated lands constituting a village within defined boundaries was granted for the express purposes of bringing lands in that village under cultivation, the grant should be presumed to have been of the lands also, that is, the grant was of both the mealworm and kudiwaram in the lands, if there was no evidence contra to

militate against such a presumption.

6. The Tribunal accepted the contentions of the rots (respondents 3 to 9 before me) based principally upon Ex. R. 1 that even before the grant in 1773 there were persons who had rights in the lands in the village the Assistant Settlement Officer rejected Ex. R. 1. He held that its genuineness had not been established and he held further that the rots had failed to establish that the document referred to any of the lands covered by the grant of 1773. The Majority of the Tribunal accepted Ex. R. 1 as genuine. By that finding of fact I am, of course, bound. My jurisdiction under Art. 226 of the Constitution is limited. The Tribunal was apparently of the view, that Ex. R. 1 was of 1773-1774, but they did not record any finding whether it was antecedent to the grant. Ex. R. 1 purported to evidence the transaction by which one Kuppaiyan Rowther sold to Seenia Pillai and his brother of Karuppannan one-eighth of a Karats that belonged to the vendor, after excluding the six major karats that belonged to the pagodas. How the extent of a karats was to be fixed particularly in relation to the 88 Vrettos in which the village was held in 1864 there was no evidence to show. Whether the land sold under Ex. R. 1 was cultivated or even cultivable that document did not show. Certainly it could not have been cultivated land. The terms of the grant implied that the entire extent of the village was uncultivated. Nor did Ex. R. 1 throw any light on the question, whether the entire village was owned by the Pangaea's of the six major karats and the unspecified minor karats and if they did not exhaust the entire village, what proportion they bore to the entire extent of the village. From Ex. R. 1, the Tribunal eventually held that it was of 1774—it could not even be held that it was proved to have been antecedent to the grant in 1773. But it must also be remembered that the grant by Mallery Row was to 12 Brahmins and the vendor who claimed rights in Ex. R. 1 was a Muslim. But if Ex. R. 1 not antecedent to the grant, and there was no finding of the Tribunal that it was antecedent to the grant, it can have no real evidentiary value to determine the question, what was it that Mallery Row granted to the 12 Brahmins in 1773? Besides, from the nature of the grant made by Mallery Row, which grant was subsequently confirmed by the British Government, it should be clear that the grantor did not recognize any claims to any of the lands in the village and what he granted was the entirety of the lands in the village. That, of course, did not affect the rights of others, if any, that existed prior to the grant. See S. 1 of the Madras Loans Act of 1869. Still the position is that the grant was of the entire village, that is, of both the kudiwaram and the melwaram in all the lands in the village. The finding of the Chairman of the Tribunal ran "So when it is clear that even in 1774, there were rots with occupancy rights with shares in the village, it is not correct to conclude that all the lands in the village had been waste in 1773. From the recitals in the Fair Inam Register, it is possible to infer that a major portion of the village had been waste and that the Dharmasanamdars were required to bring all the lands under cultivation."

7. The earlier part of that finding is not supported by any evidence, even by Ex. R. 1. Ex. R. 1 did not show that the land that Karuppaian Rowther purported to

sell was cultivated land. It did not therefore prove "that all the lands granted in 1773, were not waste." The only inference from the recitals in Ex. A. 1 by themselves could be that all the lands in the village were waste and had to be brought under cultivation in future, for which specific purpose the grant was made.

8. The relevant facts as found by the Tribunal and based on the evidence before it must be taken as follows The grant in 1773 was of the entire village. The grantees had no antecedent interest in any of the lands in the village. Ex. R. 1 is genuine. It was of the years 1773-1774. In fact, at a later stage, the Chairman of the Tribunal dated it as 1774, in which case it could only have been subsequent to the grant of 1773. To this list I must add the following factors. Ex. R. 1 was not proved to have been antecedent to the grant. The evidence was not that a major portion of the village was uncultivated on the date of the grant, but that the whole of it was uncultivated. There was no evidence that antecedent to the grant any one claimed any rights or exercised any rights in any of the lands in the village. It is in the light of these findings that I have to answer the question, was there evidence before the Tribunal on which it could find that Karungulam was an Inam estate? ""Inam estate was defined in S. 2 (7) of Madras Act XXVI of 1948 " "Inam estate" means an estate within the meaning of S. 3, Cl. 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 (3rd Amendment) Act, 1936."

9. Section 9 (7) of Act XXVI of 1948 was; "In the absence of evidence to the contrary, the Settlement Officer and the Tribunal may presume that an Inam village is an inam estate."

10. Section 3 (2) (d) of the Madras Estates Land Act 1 of 1908 as it stood before the Amendment of 1936 ran "Estate means any village in which the land revenue alone has been granted in inam to a person not owning the kudiwaram thereof, provided that the grant has been made, confirmed or recognised by the British Government, or any separated part of such village.""

11. Somayajulu v. Seethayya 46 Mad. 92 at 98=16 L.W. 462 (F.B.), the learned Chief Justice, who delivered the judgment of the Full Bench observed "It has been established that, where a grant in inam is a grant of both the landlord's and the tenant's rights in the land or as they are called the melwaram and the kudiwaram, the land is not an estate; but if the grant is of the landlord's rights or the mealworm alone, it is an "estate", so that the question to be decided is whether the grant is of the land itself or only of the right to the revenue from the land."

12. These principles were left unaffected by the decision of the Privy Council on appeal reported in Seethayya v. Somayajulu 52 Mad. 453=29 L.W. 804 (P. C). These same principles were laid down earlier by the Privy Council in Nainapillai Marakayar v. Ramanathan Chettiar 47 Mad. 337 = 19 L.W. 259 (P.C.).. At page

351, is the observation "Their Lordships find that the melwaram and the kudiwaram interests in the lands of the village of Mangal were at some time before 1723 granted by a Raja of Tanjore, and regranted in 1723 by the then Raja of Tanjore, to the temple, and consequently that the lands in suit are not an "estate" within the meaning of Act I of 1908. x x x"

13. In Venkata Sastrulu v. Siaramudu 98 Mad. 891 Sadasiva Aiyar, J., observed "The grant of the melwaram right means that the grantee is to receive the melwaram revenue from the peasant proprietors who are already in the enjoyment of the cultivated lands in the village and that, as regards the waste lands in the village, he is entitled to create further melwaram revenue for himself by letting them to cultivating tenants."

14. The learned Judge further observed ".if it is proved that at the time of the grant of the whole village in inam all the lands in that village were lying waste or if it proved that at the time of the grant of certain defined extent of lands in a village (such a grant being called a minor inam grant) that extent of lands so granted as minor inam was lying waste, the grant might be deemed in either case to be not of the melwaram alone in such waste lands but of the kudiwaram also. In such a case, of course, even the whole village so granted will not fall under the definition of "estate" in S. 3, CI. 2 (d) because that section relates to cases where the grant was of the melwaram alone. Where the entire lands themselves in the village, as they were lying waste, were granted in inam, it cannot, of course, be said to be a grant of the melwaram alone."

15. I respectfully agree with these observations. Though on appeal against the decision of this Court in Venkata Sastrulu's case 33 Mad. 891. the Privy Council reversed it and held that the village of Billoadu was not an estate [See Venkatasastrulu v. Seetharamudu 43 Mad. 166=10 L.W. 633 (P.C.). J. the observations of Sadasiva Aiyar, J., which I have extracted above, were never dissented from. Nor was there any dissent from the observations of Seshagiri Aiyar, J., on the scope of S. 3 (2) (d) of the Estates Land Act "the use of the word "alone" in qualifying land revenue is somewhat misleading. What the Legislature meant to lay down was that no kudiwaram rights should have been granted in the lands which were under the occupancy of tenants; any other construction will lead to difficulties."

16. These observations of Seshagiri Aiyar, J., were approved of by Ayling and Oldfield, JJ., in Sri Raja Varadaraja Apparao Garu v. Katnani Karuvina 30 M.L.J. 249=3 L.W, 196. In that case the findings of the District Judge, which were accepted by the Division Bench, were in the alternative. The District judge held in the alternative that the original grant included the kudiwaram of the village and that the grantees enjoyed the kudiwaram rights in all the cultivated lands in the village at the time of the original grant. The learned Judges held that it was not an estate.

17. The following propositions emerge from the definition of " estate " in S. 3 (2)

(d) of the Estates Land Act as it stood before the Amendment of 1936 and as interpreted by the decisions referred to above. I must now however be understood as having embarked upon an exhaustive list of all the circumstances under which a village is an estate or is not an estate.

1. Where the melwaram alone of a whole village is granted as inam to a grantee, who had no interest in the village antecedent to the grant, the village is an estate.

2. Where the melwaram of the whole village is granted to a grantee, who owned the entire kudiwaram interest in the village antecedent to the grant, the village is not an estate.

3. Where both the melwaram and the kudiwaram in the whole village are granted to a grantee, who had no interest in the village antecedent to the grant, the village is not an estate.

4. Where all the lands in a whole village are granted to a grantee, who had no antecedent interest in the village, and where it is proved that all the lands in that village were lying waste at the time of the grant, the village is not an estate.

5. Where a whole village is granted, and the grantee had even prior to the grant, kudiwaram interest in some of the lands in that village, the village is an estate [see the observations of Ayling and Oldfield, JJ. in *Sri Raja Varadaraja Apparao Guru v. Katnani Karu nana* 80 M. L. J. 249=3 L.W. 196. a village will not cease to come under Cl. (d) merely because the grantee owned the kudiwaram in certain lands included therein, not even in so far as those lands are concerned.

18. On the facts proved in this case Karungulam, in my opinion, falls within the scope R. 4 above. It would even come within the scope of R. 3. In neither case would it be an estate as defined by S. 3 (2) (d) of the Estates Land Act as it stood before it was amended in 1936. Even on the finding of the Tribunal that the major portion of the village was lying waste at the time of the grant—as I have pointed out earlier that finding was not supported by the evidence on record Karungulam could not be an estate. I have already referred to the dicta of Seshagiri Aiyar, J. in *Venkatasastrulu's* case 39 Mad. 891. "what the Legislature meant to lay down was that no kudiwaram rights should have been granted in the lands which were under the occupancy of tenants."

19. That was just what Mallary Row purported to grant. He granted all the lands in the village and the grant must be deemed to have included those in which Kuppayan Rowther claimed rights for himself and others in Ex. R. 1.

20. I am not deciding in this case what are the other rights inter so the invaders and the roots, that is, whether the roots have acquired by means other than those provided for by the Estates Land Act, or under the Act after the Amendment of 1936, permanent rights of occupancy in any of the lands in the village. That is wholly outside the scope of my investigation in these proceedings. As pointed out by Venkatarama Aiyar, J. in *Govinda Reddi v. Pattabhi Reddi* 66

L.W. 916. that in if given case the roots could claim permanent rights of occupancy in some of the lands as against the inlanders in no way affects the determination of the question, do the terms of the original grant establish that a given village is an imams estate as defined by S. 2 (7) of Madras Act XXVI of 1948. I am not therefore going into the question of the significance of the use of the expressions Pannai Pathi and Kudi Pathi in the documents subsequent J to 1864. At I have come to the conclusion that there was no evidence on which the Tribunal could have come to the conclusion that Karungulam was an inam estate as defined by S. 2 (7) of Madras Act XXVI of 1948, the order of the Tribunal has to be set aside. This petition is allowed The rule nisi is made absolute. Respondents 3 to 9 (the roots) shall pay the costs of the petitioner. Counsel's fee Rs. 100.