
(1959) 10 MAD CK 0006
In the Madras High Court

S.V.R.B.K.R. Gopalan

APPELLANT

Vs

The Estates Abolition Tribunal and Another

RESPONDENT

Date of Decision : 13-10-1959

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(16)

Citation : (1960) ILR (Mad) 333 : (1960) 73 LW 47 : (1960) 2 MLJ 182

Hon'ble Judges : Ramachandra Iyer, J; Ramachandra Aiyar, J

Bench : Division Bench

Judgement

Ramachandra Iyer, J.—This is a petition under Article 226 of the Constitution for the issue of a writ of certiorari or any other appropriate

writ to call for the records in A.S. No. 130 of 1955, on the file of the Estates Abolition Tribunal, Vellore, and to quash the order therein.

2. The Inam village of Vikramam in the Tanjore District was notified by the Government under the provisions of Madras Act XXVI of 1948; the

estate was taken over by the Government on 1st October, 1951. The petitioner, who had purchased the share of one of the erstwhile inamdars,

filed an application, u/s 13 of the Act, before the Assistant Settlement Officer, for the grant of ryotwari patta in respect of 52 items of land in the

village. The Officer granted him patta for 46 items, but declined to do so for the remaining six. From the order of the officer, there was an appeal

by the petitioner to the respondent, the Estates Abolition Tribunal, Vellore, in respect of two of the items, namely, items 48 and 49. Those items

are situated in S. No. 21 3/2, and are 2.24 and 0.42 acres respectively in extent. The Tribunal, accepting the view of the Assistant Settlement

Officer held that, as S. No. 213/2 was classified, as part of tank poromboke, the petitioner would not be entitled to a ryotwari patta in respect of

the two items. The legality of the order of the Tribunal is sought to be challenged in this petition.

3. It is now admitted that the lands covered by S. No. 213 of which the items now in controversy form part, originally constituted the bed of a tank

which was an irrigation source for the lands in the village. It is also admitted that the tank existed before and after the coming into force of the

Madras Estates Land Act (I of 1908). The Record of Rights relating to the village Vikramam, which was prepared in 1934, designates the land as

tank poromboke. But the tank ceased to have any utility as an irrigation source after the introduction of Cauveri Mettur Project. Thereafter, the

irrigation of the lands under the ayacut of the tank was provided for by the irrigation channels constructed under the project. The ayacut of the tank

was transferred to that under the project. The tank, in course of time, appears to have become silted up. The inamdar began cultivating the tank-

bed lands : those lands were also included in the ayacut of the Cauveri Mettur Project. It is stated on behalf of the petitioner that there was

continuous cultivation by his predecessors-in-title of the lands since at least from 1944. There is evidence to show that the inamdar dealt with the

properties since then as iruwaram lands belonging to him.

4. Before the Tribunal, contentions were raised as to the correctness of the entry in the Record of Rights relating to the lands now in controversy.

Those contentions were, however overruled. As we stated already, it is now conceded that the lands which form the subject-matter of this petition

formed the bed of an irrigation tank.

5. Mr. V. Vedantachariar, the learned advocate for the petitioner contended that, whatever might be the entry in the Record of Rights, the tank

factually ceased to be such long prior to the date of the notification under Act XXVI of 1948, and that, the bed thereof being cultivable land, and in

fact cultivated since at least from 1944, should be treated as a land coming within Section 13 (b)(iii) of the Act. It is conceded that the land could

not be treated as private land. But the basis of the claim is not that the land became a private land at any time, but that when the tank bed was

abandoned for the purposes of a tank, it became a ryoti land, and that in the present case no ryot having been let into possession, the Inamdar

would be entitled to a ryot-wari patta under the aforesaid provision, he having

continuously cultivated from a time anterior to 1st July, 1945.

Section 13 (b)(iii) runs:

All lands (not being (i) lanka lands, (ii) lands of description specified in Section 3, clause (16) sub-clause (a), (b), and (c) of the Estates Land Act,

or (iii) forest lands) which have been abandoned or relinquished by a ryot, or which have never been in the occupation of a ryot, provided that the

landholder has cultivated such lands himself, by his own servants or by hired labour, with his own or hired stock, in the ordinary course of

husbandry, from the 1 st day of J uly, 1945 and has been in direct and continuous possession of such lands from that date.

This provision excludes the lands coming u/s 3(16) of the Estates Land Act, which runs thus:

"Ryoti land" means cultivable land in an estate other than private land but does not include (a) beds and bunds of tanks and of supply, drainage

surplus or irrigation channel.

Prima facie, therefore, the landholder would not be entitled to patta in respect of a tank-bed land. But it is contended on behalf of the petitioner

that, in order to disentitle the landholder to the benefits of Section 13 (b)(iii) of the Act, the tank should be in factual existence, and that an

abandoned tank would not come within the terms of Section 3(16)(a) set out above. It is further contended that, in order to constitute a tank-bed,

the area in controversy should be covered with water, and that, where a tank which was an irrigation source at one time was abandoned by reason

of other sources of irrigation coming into existence, the tank-bed would properly become the property of the landholder.

6. Reliance was placed, in this connection, upon the decision in *Samayan Served v. Kadir Moideen* (1918) 51 I.C. 899. In that case an irrigation

tank in an estate was abandoned by reason of irrigation facilities being provided by the Periyar scheme. The bed of the tank was utilised by the

owner of the Estates for his own purposes. The ryots of the village disputed the right of the landholder to divert the bed of the tank to purposes

other than those, for which it was originally intended, namely, as a source of irrigation for the lands under its ayacut. It was held that, while the

zamindar would have no power to do away with the tank, in the maintenance of which a large number of ryots would be interested, there was no

such duty where the system of irrigation under the tank was rendered unnecessary by new irrigation facilities which provided the accustomed

supply of water from the new source, and that the landholder would be under no obligation to maintain the old system. Napier, J., observed at

page 903:

I am, therefore, of opinion that the enjoyment of the tank-bed to the extent of the utilisation of water stored in it, is a right which only exists as long

as it is the duty of the zamindar to preserve such a tank and that where he is in a position to give all proper water facilities from the tank without

such storage, he is under no obligation to maintain the old system.

7. Where, therefore, the maintenance of a tank was unnecessary by reason of the ryots under its ayacut getting their accustomed supply of water

from other sources, and no damage was caused to them by the tank-bed being used for cultivation or for purposes other than that of storage

water, the landholder was held to be under no obligation to preserve the tank for the storage of water. The decision in that case was concerned

with the liability of the zamindar to maintain the irrigation source even after the introduction of another and an efficient source. The question,

whether the original tank-bed would cease to be such and become a ryoti land, was not, however, considered in that case.

8. A tank-bed denotes an area which is intended to hold water for the irrigation of the lands under its ayacut. It is not necessary, however, that the

entire area should always be actually under water. Except in cases where the ryots are proved to have certain rights in the beds of tanks situate in

an estate, the normal rule is that the tank belongs to the proprietor, subject to his obligation to maintain the tank as an irrigation source. Where the

landholder is the proprietor of a tank, it would always be open to him to cultivate such portions of the tank-bed, in which there is no water. In

Balusamy v. Venkatadn Appa Rao (1917) 47 I.C. 594, a bench of this Court held that, in order to constitute a tank-bed within the meaning of

Section 3(16)(a) of the Estates Land Act, it was not necessary that the bed should be under water, that the term "tank-bed" would include lands

which were capable of being cultivated when the tank had become dry or when there was no water therein and that the tank-bed lands cultivated

by the landholders were neither private lands nor ryoti lands. In Narayanaswami

v. Kamamia (1919) 51 I.C. 318, a tank in an estate was abandoned long prior to the coming into force of the Madras Estates Land Act. A question arose whether the ryot acquired occupancy right in respect of it. It was held that the land, which was a tank bed, would not be ryoti land and a suit to eject a tenant from such land would be cognizable by a civil Court. The learned Judges further held that Section 3(16) of the Madras Estates Land Act would apply only to those tank-beds which had not lost their character as tank-bed on the date when the Madras Estates Land Act came into force. In *Meeralli Ambalam v. Shanmugha Rajeswara Sethupathi* (1933) 66 M.L.J. 338 : ILR (1933) Mad. 593, certain plots of lands in a portion of the tank-bed situate in an estate were submerged in normal times after the rainy season. But they were brought under cultivation in other seasons of the year. It was held that the lands did not cease to be a tank-bed, because cultivation was carried on in certain seasons. Venkatasubba Rao, J., observed at page 341:

The definition of "" ryoti land "" excludes in terms tank-beds.... A certain land is either ryoti or tank-bed and unless it ceases to possess the character of a tank-bed, it cannot be ryoti.

The decision was rendered prior to the amendment of the Madras Estates Land Act in 1934, which introduced Section 20-A. That the principle of the cases which we have cited above would hold good even after the amendment is made clear by the the decision in *Ramaswamy Goundar and Another Vs. Ramaswami Goundar and Others*, . It was held in the latter case, that, where the proprietary rights of the landholders of an estate in the tank-beds were unaffected by custom, the ryots of the village would have no interest in the land apart from the right to use the water therein for the purpose of cultivating their holdings, and that the landholder would be entitled to cultivate such parts of the bed of the tank as become exposed when the water receded in the dry season, provided that the cultivation did not prevent the water spreading when the rains came. The result of the decision is that it would be open to the proprietor to cultivate the tank-bed in cases where there was no customary right in the ryots prohibiting such cultivation, and that the right of the latter was only a right to secure the proper maintenance on the part of the landholder of the tanks so as to afford the accustomed supply of water for their holding. Therefore, when at the

date of commencement of the Estates Land Act an irrigation tank

in the estate existed, the tank-bed would continue as a tank-bed thereafter, notwithstanding the cultivation thereof by the landholder. Such

cultivation is allowed by reason of the right of the proprietor over the property (without prejudice to the rights if any of the ryots), and not because

that the land gets converted into a ryoti or private land thereby. The existence of a proprietary right in the tank, which enabled the landholder to

cultivate tank-bed lands, is by itself of no importance for the purpose of determining the scope of the Statutory rights which will be claimed u/s 13

of Act XXVI of 1948. Prior to 1934 what was a tank-bed on the date Act I of 1908 came into force continued as a tank-bed land. Section 20-A

of the Estates Land Act, which was introduced into the main Act by Madras Act VIII of 1935, provided for the conversion of the tank-bed among

other communal lands into ryoti lands. That section, so far as it is necessary for the present case, runs:

20-A. (1) Subject to such rules as the Provincial Government may prescribe in this behalf, the District Collector may on the application of the

landholder a ryot or any other person interested--

(a) declare that any land or any portion of any land which is set apart for any of the purposes, referred to in sub-clauses (a) and (b) of clause (16)

of Section 3 is no longer required for its original purposes; and (b) by order in writing direct--

(i) That any such land or portion in respect of which such declaration is made, be used for any other specified communal purpose; or

(ii) if such land or portion is not required for any communal purpose, that it be converted into a ryotwari land or landholder's ryoti land according

to the reversionary rights in such land vest under the terms express or implied, of the sanad, title-deed or other grant in the Crown or in the

landholder.

On its terms the provisions of the section would apply to all cases where there was a tank on the date when the Madras Estates Land Act came

into force. Once, therefore, there was a tank on that date, the tank-bed land could be converted into a land of different character only under an

order passed by the Collector under the provisions of Section 20-A and till such an order was made, the land would not lose its original character

as a land reserved for communal purposes. So long as there was no order by the District Collector u/s 20-A it must be held that a mere non-user

of the tank, which existed on the date when the Estates Land Act came into force, could not make its bed a ryoti land, although the landholder, as

proprietor, might have certain rights for the cultivation of its bed so long as he continued to be the holder of that estate. In the present case, till the

date when the notification was made, there had been no order of the Collector under the provisions of Section 20-A converting what was tank-

bed land into a land of any other category. It follows that, on the date when the Act came into force, S. No. 213 retained its character as a tank-

bed within the meaning of Section 3(16)(a) of the Estates Land Act : it therefore came within the scope of what was excluded by Section 13 (b)(iii)

of Act (XXVI of 1948).

9. It was next contended by the learned Advocate for the petitioner that, as the lands though tank-bed in origin, had been included in the Cauvery-

Mettur Project ayacut, it should be held that there had been an order of the Collector u/s 20-A of the Estates Land Act, as, according to the

petitioner an order of inclusion under the Cauvery-Mettur Project ayacut would be tantamount to an order u/s 20-A. Section 20-A is a statutory

provision. Rules have also been made by the Government under the provisions of that section for the exercise of jurisdiction vested in the Collector

for conversion of tank-bed and other communal lands into ryoti or other lands. Admittedly, the procedure prescribed by the rules have not been

followed. In our opinion, a mere grant of permission to irrigate from the water of the Cauvery-Mettur Project or even a recognition by the

authorities of such irrigation and cultivation of the tank-bed lands would not amount to an order u/s 20-A. The precise question before us arose for

consideration in W.P. No. 728 of 1957. Rejecting a similar contention, Rajagopala Ayyangar, J., observed:

I am unable, however, to agree in the contention that the permission to cultivate the tank-bed lands in pursuance of the Grow More Food

Campaign or the inclusion of these items in Cauvery-Mettur Project ayacut could by themselves either independently or in conjunction, constitute a

release from the reservation u/s 3(16)(a) of the Estates Land Act, which only an order u/s 20-A can effect. Section 20-A is a statutory provision

by which the lands set apart for the purposes; named in Section 3(16)(a) could be disannexed from that obligation.

We are in complete agreement with the observations of the learned Judge. It follows that the order of the respondent declining to grant patta in

respect of S. No.. 21 3/2 is correct. The Tribunal has, however, made a recommendation to the Government that, in case it decides to give away

the lands on patta, the claim of the petitioner should be duly considered by the authorities, in view of long enjoyment of the lands by him and his

predecessors-in-title. As we pointed above, the lands have been in continuous cultivation by the landholder, and the petitioner purchased the same

for consideration. In the circumstances, we endorse the recommendation of the Tribunal.

10. The rule nisi is discharged. In the circumstances there will be no order as to costs.