

(1951) 12 SC CK 0001
In the Supreme Court Of India
Case No : Appeal (civil) 65 Of 1951

The District Board, Tanjore represented by its President	APPELLANT
Vs	
M.K. Noor Mohamed Rowther and Others	RESPONDENT

Date of Decision : 10-12-1951

Acts Referred:

Madras Estates Land Act, 1908 — Section 3, 3(2)

Citation : AIR 1953 SC 446 : (1952) 65 LW 98 : (1952) 2 MLJ 586

Hon'ble Judges : N. Chandrasekhara Aiyar, J; Mehr Chand Mahajan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mahajan, J.—This appeal arises in the following circumstances: Under a 'muchilika' dated 1-8-1945 the respondent took on lease from the appellant the land in suit for a period of three years on the fixed rental mentioned therein. The lease expired on 30-6-1948. Before the expiry of the three years' period the respondent filed Summary Suit No. 87 of 1948 in the revenue Court for grant of a patta in respect of the suit land on the allegation that he had acquired permanent rights of occupancy against the landholder. It was alleged that the land had not been surrendered to the landholder on the expiry of the lease. During the pendency of this summary suit, on 4-8-1948 the plaintiff-appellant filed the suit, out of which this appeal arises in the Court of the Subordinate Judge, Tanjore, for a permanent injunction restraining the defendant from interfering with the appellant's possession of the land in suit.

It was alleged that the plaintiff had entered into possession of the suit properties after the expiry of the lease, and part of the land had actually been brought under cultivation, that the respondent-defendant was threatening to take forcible possession of the properties which he had no right in law to do. In the written statement the respondent pleaded that in spite of fine Clause in the 'muchilika' by which the lessee had undertaken to surrender possession of the leased lands by 30-6-1948 he was entitled to continue in possession and management thereof

with a right of permanent occupancy therein. He claimed to have become entitled to a permanent right of occupancy by virtue of the provisions' of Section 6, Madras Estates Land Act (I of 1908). It' was contended that the suit land was and is an "estate" within the meaning of Section 3 (2) (d) of the Act as amended by Act 18 of 1936 and was within the ambit of Section 6 of the Act. A number of issues were framed in the case. Issue 1 was in these terms:

"Whether the suit lands are ryoti lands in a whole inam village, and whether first defendant has acquired occupancy rights thereon."

By consent of parties it was decided that the question involved in the issue whether the suit land is an estate as defined in the Madras Estates Land Act be tried as a preliminary issue.

2. The Subordinate Judge held that the suit land did not constitute an estate as defined in Section 3 (2) (d), Madras Estates Land Act. On a petition for revision presented to the High Court it was held that the suit land did constitute an estate within the meaning of the Act. As a result of this decision the High Court directed the return of the plaint with a direction that it be presented to the proper Court which had jurisdiction to hear it. An application was made for an amendment of the order and praying that the suit be remanded to the Subordinate Judge for trial of the remaining portion of issue 1 and issues 2 to 5. By an order dated 28-7-1950 passed on this application by the High Court the plaintiff's suit was dismissed 'in toto'. The High Court by its order dated 13-9-1950, however, granted a certificate under Article 133 of the Constitution for appeal to this Court.

3. The relevant portion of Section 3, Sub-clause 2 defining "estate" is in the following terms:

"(2) 'Estate' means--

.....

(d) 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.

Explanation 1: Where a grant as an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service or other tenure or been reserved for communal purposes.

....."

The question for decision is whether the grant in this case to the predecessor in interest of the appellant was of a whole inam village, and if the grant did not incorporate the whole village area, whether the grant was so expressed as to be of a named village and any area excluded from it had been already granted on

service or other tenure or reserved for communal purposes within the meaning of Explanation 1. In other words, the grant must either comprise the whole area of a village or must be so expressed as tantamounts to the grant of a named village as a whole, even though in fact it does not comprise the whole of the village area. In this latter case in order to come within the scope of the definition it must fulfil the following conditions: (a) the words of the grant should expressly (and not by implication) make it a grant of a particular village as such by name and not a grant of a defined specific area only; and (b) that the area excluded had already been granted for service or other tenure; or (c) that it had been reserved for communal purposes. It was conceded by Mr. Somayya, the learned counsel for the respondent, that the burden of proving that certain lands constitute an "estate" is upon the party who sets up the contention. In my opinion, on the materials existing on the record in this case that burden is not satisfactorily discharged. The only evidence in support of the respondent's contention consists of two solitary entries (Exhibits B-1 and A-2) from the inam register prepared in the year 1870. Those entries clearly show that the grant to the predecessor in interest of the Chatram (the appellant) did not incorporate the whole area of the village lands. It was, however, contended that the grant was in express terms of village Kunanjeri by name, and that the lands excluded from the grant had already been granted in inam previous to this grant to some other person on service or other tenure and that being so, the grant fell within the definition of the word "estate" read in the light of Explanation 1.

4. Exhibit B-1 is an extract from the register of inams in the whole village of Kunanjeri. Col. 2 in this extract bears the following heading: "General class to which the inam belongs", and under it the entry is "Personal. Now Dharmadayam". Col. 3 concerns the survey numbers and names of the field or fields comprised in the grant. The entry in this column is "'Ayacut'. Deduct 'poramboke' minor inams". No survey -numbers are mentioned, though admittedly the land was described by survey numbers in the revenue papers. The fourth and fifth columns in the register relate to the extent of the grant and show that the grant was of the total area minus 63 acres odd, though this entry is not quite consistent with the statements contained in col. 21.

Cols. 6 and 7 relate to the cess paid by the ryot to the inamdhar or the average assessment of similar government land. No entry is found under these columns. Some entries appear in Col. 7 giving calculations of the amount that during the inam proceedings was fixed as quit rent in lieu of the earlier kind rent, but these have no relevancy to the heading of the columns. In column 8 which relates to the description of the inam it was stated that it was for the personal benefit of the holder. The tenure was stated to be hereditary and the proposed quit rent was in the sum of Rs. 1,733-10-10. The heading of col. 11 is "By whom granted and in what year". The entry under it is "By Pratapa Simha Raja 1790".

Under col. 12 it is stated that the grant was under a 'Paravangi' bearing the seal of Sri Pratapa Simha Raja of the year 1790. Col. 13 states that the original

grantee was Gudalur Venkatachala Mudali. Col. 14 mentions that at the time when the register was prepared under Regulation 31 of 1802, one Mukthambalpuram Annachatram was the registered holder. Cols. 15, 16, 17, 19 and 20 have been left blank as those columns have no relevancy to the history of this grant. In Col. 18 the appellant's name is entered. This column relates to the relation of the present holder to the original grantee or subsequent registered grantee. Col. 21 is for "the Deputy Collector's opinion and recommendation". It contains the following recital:

"This is a whole 'Nel Izara' or grain rented village. It is, supported by a 'Paravangi' granted by Pratapa Simha Raja, in the year 'Tissian maya Alaf' corresponding to 'Sadarana' (A. D. 1790).

Copy of the 'Paravangi' is attached to this Register.

From the 'paravangi' it appears that this village was rented to Gudalur Venkatachala Mudali subject to the grain rent of 4,000 'kalams' of paddy.....exclusive of sundry charges.

V. M. The area of the village as per Parvana is ... 40--12 of which land allotted to Venkatachala Mudali ... 39--17 (Particulars--Poramboke 5V. Paticat punja 2V. 10M. Wet 32V 7M. ... 39--17 Yerayeli which is now registered as minor inam ... 0-15 ----- Total ... 46-12 ----- The said 4,000 kalams were fixed upon 33V. 2M. inclusive of Yerayeli. V. M. V. M. Thus ayacut ... 40 -- 12 Deduct poramboke ... 5--0 Punja ... 2--10 ----- 7-10 ----- V. M. Remainder wet ... 33--2

This village was purchased (by Saraboji Maharaja) for the Mukthambalpuram Annachatram from Sarangapani Ayyangar (who seems to have purchased it from Venkatachala Mudali) in 1811 for Rs. 7,850. Deed of sale is produced on plain paper copy of which is submitted. The village has since been in the enjoyment of the 'chatram'."

Then follow details as to the mode of calculation of the 'jodi', (quit rent), and as to how it was fixed at Rs. 1,733-10-10 as regards the holding of the 'chatram' and at Rs. 36-5-2 for the holding of Vijayathammal, owner of the Yerayeli inam. There is a later note of the year 1947 under which this quit rent was shown to be redeemed on payment of a certain sum of money.

5. From the various entries mentioned above, all that can be legitimately inferred is that out of the total area of the village 40V. 12M., the land allotted to Mudali was 39V. 17M. and the land described as Yerayeli was OV. 15M. Two blocks of land, one a major block, another a minor block, were held by two different persons under two separate grants. It also appears that previous to these grants the whole village had been rented by the Raja to Mudali for a rent of 4,000 'kalams'. The boundaries of the village given include both these areas. There is nothing in this document from which it can be properly inferred that in express terms the village of Kunanjeri was granted to Mudali as an inam.

On the other hand, it appears that when the whole village was given on lease, it was so described in clear terms. In the column dealing with the extent of the grant, it is not stated that the grant is of the village as such. On the other hand, the area granted is stated. It also does not appear from this document that the area described as Yerayeli had been granted prior to the grant of major area in 1790 or it was a contemporaneous grant by the same paravangi or was subsequent to it.

6. Exhibit A-2 is another entry from the same inam register relating to the area described as Yerayeli. In col. 2 it is stated that this area was also a personal grant. Col. 3 gives the survey number of the area granted. Cols. 4 and 5 give the area in acres. Col. 6 is blank, while col. 7, states the amount fixed as quit rent. In col. 8 it is stated that the grant was for the personal benefit of the holder. Col. 9 gives the amount of the proposed 'jodi' as Rs. 36-5-2. In col. 10 it is stated that the grant is hereditary. Col. 11 is headed "By whom granted and in what year". There is no entry under this heading at all.

In col. 12 it is stated that the grant was under the 'paravangi' of 1790. The name of the original grantee in col. 13 is also left blank. In Col. 14 it is stated that one Chinna Appumuppan was registered as the holder under Regulation 31 of 1802. In col. 16 the name of the present holder is given as Vijayathammal, Age 20. Cols. 17 and 20 are left blank. Col. 18 is headed as follows: "Relation to original grantee or subsequent registered holders". Underneath this column is entered: "Grandson's widow to the party in the 14th column". In col. 21 it is stated "Reference be made to the register entry in Ex. B-1".

7. From this document again it is not possible to hold that the Yerayeli grant was previous to the grant to Mudali or was contemporaneous or subsequent to it. The probability is that as both these grants refer to the 'paravangi' of 1790, they may have been by the same document, but it is not possible to say in what order they were made.

8. On 16-12-1870 both these grants were confirmed by the Inam Commissioner. By title deed No. 2156, the principal grant was confirmed to the Chatram on a combined quit rent of Rs. 1,798, while by title deed No. 2157 the Yerayeli grant was confirmed in favour of the heirs of Vijayathammal. The result is that in this village two blocks of land are held under two separate grants by two different persons and they were recognized under two separate title deeds by the British Government. From this meagre material it is not possible to conclude that the first grant was either of the whole village area or was expressed to be of a named village and that the area excluded had already been granted for service or other tenure.

The learned trial Judge and the learned Judges of the High Court thought that the inam grant of Kunanjeri village covered by title deed No. 2156 was of a named village because in col. 21 the boundaries of the whole village were given and the whole village was described as a grain rented village. In my opinion,

from this recital in Col. 21 such an inference was not justified. The description in that part was given concerning' the lease that had been granted to Mudali prior to the grant and while describing the lease it had to be said that the lease was of the whole area of the village and its boundaries were stated. When the question of grant was dealt with, it was clearly stated in entry 21 that the grant was of 39V. 17M. out of an area of 40V. 12M. The more reasonable inference is that the grant was expressed in terms of areas and not in terms of the name of a village.

Even when the grant is of a particular area in a village, the village has to be named; but, in my opinion, that is not complying with the conditions mentioned in Explanation 1 to Section 3(2) (d) of the Act. Under the explanation in express terms a grant has to be of a village by name and if the grant is expressed in those terms and it is discovered that it does not incorporate the whole area of the village and certain area has been excluded from it, even then the grant will be deemed to be of an estate provided the area excluded has already been granted on service or other tenure or given for communal purposes. From the entries in Exhibits B-1 and A-2 such an inference cannot be drawn.

Obviously the case does not fall under the main part of Clause (d) because the grant was not of the whole village as certain area was admittedly excluded from it. It is difficult to hold positively, though it is probable, that the grant to Mudali as well as the Yerayeli grant were by the same-paravangi', but even so these will be two separate grants though written on one piece of paper, the contracting parties being two different persons. Neither of these grants can be held to be a grant of a whole village. On the scanty materials before us it is not possible to say that there were service grants. The expression "other tenure" in the explanation should ordinarily be construed 'ejusdem generis with a service tenure owing to the reason that these service tenures usually are resumable and in case of resumable tenures the reversionary right in the land remains in the grantee and therefore even if such resumable tenures are excluded from the grant, in substance the grant can be deemed to be of the whole village. The same can be said of lands reserved for communal purposes.

9. In -- Sishtla Janakirama Sastri and Another Vs. Jagani Gopalam and Others, , it was observed

"any inam village" in Section 3(2)(d) means "a whole village granted in inam and not anything less than a village, however big a part it may be of that village."

In my opinion, this is the true construction of Clause 3(2)(d) and the explanation has a similar meaning. It clarifies the point that notwithstanding the exclusion of certain lands in which the grantee has a reversionary interest from the grant, nonetheless it remains a grant of a whole village provided it is so expressed. In the present case from the evidence on the record as discussed above, all that can be satisfactorily held proved is that two blocks of land were separately granted to two different persons, whether contemporaneously or otherwise, it is difficult to say. There is no evidence to find satisfactorily either the nature of the

Yerayeli grant or its exact date. It seems, however, clear that the grant was not resumable, it being hereditary and being of the same nature and character as the grant to Mudali.

The learned Judges were impressed by the fact that the boundaries of the village were mentioned in the register and for fixing the 'jodi' the income from the entire village was taken into consideration and that subsequently the village was allowed to be redeemed on payment of twenty years' quit rent. From the recitals in col. 21 this inference appears to be drawn, but in my view this is not a justifiable inference. It is true that in the absence of actual and authentic evidence as to the nature of the original grant a report contained in the inam register has to be given importance, subject to the qualification that the entries in the register have been accurately made and carefully written and they give a complete picture of the-history of the grant and show how it originated and in what terms it was expressed. So far as-Ex. A-2 is concerned, it neither gives the name of the grantor nor of the grantee. The entries given in Ex. B-1 are not complete and accurate and do not state how the original grant was expressed and in what terms.

10. For the reason given above, in my opinion, it has not been satisfactorily established that the grant covered by title deed No. 2156 was a grant of a whole village or was expressed in terms of a named village and the area excluded was of a nature mentioned in the explanation and that being so, the definition of the word "estate" as given in Section 3(2)(d), Madras Estates Land Act, is not attracted to the facts of this case. In these circumstances under the provisions of Section 6(2) of the Act the defendant was not entitled to a permanent right of occupancy in the suit land.

11. The result is that the appeal is allowed, the decision of the High Court is set aside and the order of the trial Court is restored with costs throughout.

Chandrasekhara Aiyar, J.

12. While I agree that this appeal should be allowed with costs and the order of the trial Court should be restored, I would like to give the reasons in a few words of my own.

13. The facts' of the case have been fully set out in the judgment just now pronounced by my learned brother, Mahajan J., and they need not be repeated here. The question is whether the village of Kunanjeri in the Tanjore District of Madras State, is an 'estate' within the meaning of that expression in the Madras Estates Land Act (No. 1) of 1908. To decide this point, we have to take into account the definition of 'estate' in Sub-section (2) of Section 3 of the Act and explanation 1 to Clause (d) thereof. They are in these terms:

"3(2) 'Estate' means--

(d) 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--

Explanation (1).--Where a grant as an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service or other tenure or been reserved for communal purposes."

Explanation (1) was added by the Madras Amendment Act 2 of 1945. To understand and appreciate the exact scope of this explanation, a very short history may be given as to how it was found necessary to insert it in the Act. Sub-clause (d), as it originally stood, was susceptible of the construction that if it was proved that the grant did not comprise a whole inam village, either because there were parcels carved out earlier from the village or because of any reservations made by the grantor, what was granted was not an "estate".

In two Bench decisions of the Madras High Court, this view was actually taken. (See -- Tulabandu Ademma Vs. Sreemath Satyadhyana Thirtha Swamivaru represented by the general power of attorney agent, Markapuram Srinivasacharlu and Others, (B) and -- Satti Suri Reddi and Others Vs. Kolachina Agnihotrudu and Another,). The Legislature felt that this was not satisfactory, inasmuch as such villages were as a matter of fact treated as "estate" and the cultivating tenants therein were regarded as having acquired permanent rights of tenancy. It was to meet this situation that the explanation was added by Madras Act 2 of 1945 with retrospective effect from the date on which the Madras Estates Land (3rd Amendment) Act 18 of 1936 came into force.

14. In the present case, the original grant is not available and the title-deeds issued at the time of the inam settlement have not been produced. Consequently, we have to depend only ON the entries found in the Inam Register prepared in or about the year 1870, which consists of 2 parts marked Exhibit B-1 and Exhibit A-2. It is from these entries that the parties have to build up their respective cases. In exhibit B-1, the area of the village as per the 'paravangi' is given as 40V. 12M. Out of this area, 39V. 17M. is stated to be the area of the land allotted to Venkatachala Mudali, who is mentioned in column 13 as the original grantee.

0V. 15 M is said to be Yerayeli registered as a minor inam. It also appears from the notes made by the Deputy Collector under column 21 embodying his opinion and recommendation, that the village had been rented to the said Venkatachala Mudali on grain-rent. The original grant was a personal grant to Venkatachala Mudali; he sold his interest to one Sarangapani Ayyangar, and from him the Maharaja of Tanjore purchased the inam for the Mukthambalpuram Annachatram. At the time of the settlement, it was therefore a 'dharmadhayam' village.

15. The minor Yerayeli inam appears to have been granted to one Chinna Appu Moopan as a personal grant under "'paravangi' of 1790". This appears from

exhibit A-2. It is somewhat difficult to accept the contention advanced on behalf of the respondents that the grant of this minor inam may have been under a different 'paravangi', though of the same year as the grant in favour of Venkatachala Mudali. The entry in column 21 of exhibit A-2, viz., "vide remarks in the register of the whole village of Kunanjeri to be confirmed under Rule 5, Clause 3", read with what is found in column 12 referring to the paravangi of 1790, rather suggests that there was one paravangi or parvana comprising the two grants. Again, in column 21 of exhibit B-1, which relates to the bigger inam, we find the remark: "copy of the paravangi is attached to this Register". All this may be regarded as speculation, but, in the absence of definite or tangible evidence, we have to rely on inferences and probabilities.

16. Even if the 'poramboke' area had been reserved for communal purposes, the grant would still be of an "estate". But it is clear that the 'poramboke' area of 57 acres and 66 cents was also the subject of the grant in favour of Venkatachala Mudali, as it is included in the area of 39V. 17M., which was the extent of the land allotted to him. The words "deduct 'poramboke'" are obviously used for the purpose of calculation of assessment and it is the remark of the revenue official or officials who were preparing the inam Register. But what was granted to him was not the whole village.

17. A small area of 5 acres and 40 cents was granted under the same grant in favour of Chinna Appu Moopan. If this conclusion is correct--and nothing satisfactory has been urged on the side of the respondents why such an inference is not open on the entries found in the Inam Register, the 1st respondent should fail, as the burden is on him to establish that what was originally granted was an "estate". I am not placing any reliance on the circumstance that the Register speaks of "inams 'in' the whole village of Kunanjeri". The use of the preposition 'in' is indicative of little or nothing. Nor is it necessary to hold that the words 'or other tenure' in the explanation to Clause (d) of Sub-section (2) of Section 3, must be construed 'ejusdem generis' with 'service'; they are, in my opinion, wide enough to include lands granted as personal inams.

18. It appears more probable that there were two grants under one paravangi to two different persons, the bigger area of 39V. 17M including the poramboke in favour of Venkatachala Mudali, and the smaller area of 0V. 15M in favour of Chinna Appu Moopan, both being personal grants at the inception. Consequently, there was no grant of a whole inam village or of a named village smaller areas having been carved out therefrom prior to the date of the grant on service or other tenure, and the remaining part still being recognised and treated as a revenue unit with a nomenclature of its own. In any event, the 1st respondent has not successfully discharged the onus that rests on him to show that Kunanjeri was an "estate" within the meaning of the Act.