
(1959) 10 MAD CK 0032
In the Madras High Court

The State of Madras

APPELLANT

Vs

A. Chockalingam Chettiar

RESPONDENT

Date of Decision : 29-10-1959

Acts Referred:

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

Citation : (1960) ILR (Mad) 814 : (1960) 73 LW 134 : (1962) 1 MLJ 231

Hon'ble Judges : Anantanarayanan, J

Bench : Division Bench

Judgement

Anantanarayanan, J.—This appeal is preferred by the. State of Madras (represented by the Collector of Ramanathapuram at Madurai) who was the defendant in the Court below. The facts are simple. Kovilangundu, a hamlet of Koothalur village, was. notified and taken over by Government under Act (XXVI of 1948), (The Madras. Estates (Abolition and Conversion into Ryotwari Act) in September, 1949. The plaintiff in the lower Court was a perpetual cowledar of this village, by virtue of a perpetual cowle or lease obtained by his paternal grand-father from Rani Kathama Nachiar of Sivaganga on 14th May, 1874, on an annual cash rent of Rs. 164-4-0" besides cesses. But the ancestors of the plaintiff reclaimed the waste lands of this hamlet and brought them under cultivation, and he and his successors were granted Patta No. 122 by the Zamindar. The contentions of the plaintiff in suit were these : (1) the action of the Government in applying the provisions of Act (XXVI of 1948] to Kovilangundu is illegal and ultra vires, since this is not a" village " under the Madras. Estates Land Act, (2) the plaintiff is a ryot and the persons cultivating the lands are his under-tenants. Hence the Government ought not to apply the provisions of the Rent Reduction Act (XXX of 1947) to those cultivators, or to the portions cultivated by them, (3) the collection of rents or theerwa by the Government from faslia. 1360 to 1365 is, hence, only as a trustee for the plaintiff, or can only be construed as such. The Government are liable to render an account to the plaintiff for the collections so made, (4) the rights of the plaintiff, in any event, are protected u/s 20 of Madras Act (XXVI of 1948).

2. The learned Subordinate Judge decreed the suit, and the Government appeal.
3. Certain grounds may be dealt with immediately, and quite briefly, since it is very clear that the learned Subordinate Judge misdirected himself upon the question of law relating to the first ground.
4. The notification by the Government of Koothalur as an under-tenure estate, under Act (XXVI of 1948) applied to the village of Kovilangundu, which formed part-of the village of Koothalur. The notification hence applied to any part within the geographical limits of the notified village, such as this hamlet : See Srinivasa Iyengars I State of Madras¹. It is sufficient here to observe that u/s 1, Sub-section (3) of Madras Act (XXVI of 1948), the Act is applicable to all estates as defined in Section 3, Clause (2), of the Madras Estates Land Act, with an exception concerning inam villages, which is not now relevant. u/s 3(b) of the Act, the entire estate stands transferred to the Government and vests in them, by virtue of the notification, and u/s 3(c) of the Act:

all rights and interests created in or over the estate before the notified date by the principal or any other landholder, shall as against the Government cease and determine.

Consequently, the notification does vest this hamlet of Kovilangundu, which is part of the village of Koothalur, in the Government, by virtue of the provisions of Act (XXVI of 1948), particularly of Section 1(3) read with Section 3(2) of the Madras. Estates Land Act. This proposition is indisputable, and it has not been seriously challenged before me. In paragraph 7 of his judgment, the learned Subordinate Judge appears to think that the notification under Act (XXVI of 1948) will not apply to this hamlet, and herein he is clearly in error. The decision in The State of Madras and Another Vs. V. Srinivasa Ayyangar, , which the learned Subordinate Judge refers to, really held, inter alia that when the darmila inam relates to a fraction of a village, it retains its character as a part of the estate in the hands of the inamdar, and that when the estate is notified u/s 1(4) of Act (XXVI of 1948), the inam will vest in the State u/s 3(b) of the Act. Consequently, there is no difficulty in concluding that the notification did apply to this hamlet. The plaintiff in the lower Court cannot plead that the hamlet does not vest in the Government for the purpose of introduction of ryotwari settlement in such estates, which is the declared object of Madras Act (XXVI of 1948) (Vide the Preamble) unless he is able to show that his rights are saved or exempted by virtue of Section 20 of the Act, or of some other provision of law.
5. The matter of collection of theerwa by the Government from cultivators under the plaintiff between Faslis 1360 to 1365 can be separately and quite simply dealt with, later. We might immediately turn to the more important question whether any rights of the plaintiff, flowing from the permanent cowle in favour of his ancestor granted by the Rani, are saved by the operation of Section 20 of the Act, as it originally stood.
6. Here we must look at the scheme of the Act, and also to certain of its

provisions-in order to comprehend its purpose, and the context of Section 20, either as it originally stood, or as it stands after amendment. I have already referred to Sections 3(b) and 3(c), under which the entire estate is vested in the Government free of all encumbrances; and all rights and interests created before the notified date cease, and are terminated as against the Government. u/s 3(d), the Government are entitled to take possession of the estate and connected records, but they are not to dispossess any person if, prima facie, he is considered entitled to patta. That the effect of Section 3 is to vest the entire estate in the Government including ryoti lands, pannai lands, buildings and every other kind of interest except as specifically saved under the provisions of the Act, is a proposition beyond controversy or dispute. It is sufficient to refer here to the Bench decision in *S. Marimuthu Pillai and Others Vs. T.R. Krishna Joshi and Others*, and *K.S. Lakshmipathy Nayakar Vs. The State of Madras and Another*, , the Settlement Officer is to decide the date of the under-tenure. Section 11 relates to the issue of ryotwari pattas, and Sections 12, 13 and 14 concern the rights of the landholder to "pattas for private and other lands, and to pattas in inam estates and under-tenure estates. Section 15 clothes the Settlement Officer with the power to take decisions in respect of pattas to be issued under Sections 12, 13 and 14. Section 16 concerns the liability of the landholder or the ryot entitled to patta, as the case may be, for assessment of land revenue. Section 21 relates to survey and settlement, and Section 22 to the mode in which the ryotwari settlement is to be effected. Section 23 lays down the procedure for the determination of land revenue before ryotwari settlement is brought into force.

7. Section 20, as it originally stood, did provide for the recognition by Government of all rights created by a landholder in lands, by way of lease or otherwise, prior to the date of notification. The learned Subordinate Judge observed, in paragraph 14 of his judgment, that, whether the plaintiff in the lower Court was to be treated as a ryot or as a "landholder", Section 20 took away from the purview of the Act such leases, as in this case, and protected the rights of the plaintiff. But it is indisputable that Section 20 has been amended, and that in its present form such rights under a permanent cowle are not saved. Only rights in mines or minerals, quarries, fisheries, or ferries are expressly saved. The amendment was introduced by Section 8 of the Madras Estates (Abolition and Conversion into Ryotwari)(Amendment) Act. (Madras Act XLIV of 1956), and Section 9 of the amending Act gives retrospective effect to the present Section 20, by laying it down that the Section must be deemed to have come into force on the 19 the April, 1949. Admittedly, the result of this is that the plaintiff in the lower Court is not protected by virtue of the original Section 20, unless the provision giving retrospective effect to the amendment can be challenged upon any ground of ultra vires, or infringement of constitutional rights. It is sufficient here to observe that under Article 31-A of the Constitution it is enacted under Clause (1) as follows:

Notwithstanding anything contained in Article 13, no law providing for (a) the acquisition by the State of any estate or of any rights therein or the

extinguishment or modification of any such rights... shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges, any of the rights conferred by Article 14, Article 19, or Article 31.

The proviso merely enunciates that

Where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply.

unless the specific consent of the President to the Legislation has been obtained. It is indisputable that this consent has been obtained in the case of Madras Act XXVI of 1948, and hence that the provisions of the amending Act referred to above, investing amended Section 20 with retrospective effect, cannot be challenged upon any grounds of repugnance to the fundamental rights guaranteed under the Constitution.

8. It only remains for us to survey the legal consequences of such a retrospective effect. Is it as if the amended Section has not merely to be construed as having been in existence as and from the original date, for all purposes, but also that acts of either party which might have occurred in consequence of the original state of rights, are to be construed as simply not having occurred at all? For instance, if we suppose that the Collector of the district had either collected rent from the plaintiff in the lower Court upon the basis of the permanent cowle of 1874, recognising Government as bound by those terms, or made an acknowledgment to that effect in writing, which might very well be the case, should we take it that Government are not bound by either the admission or by any implied contract, and that Government are not even bound to compensate a party like the plaintiff in the Court below, for injury sustained by this retrospective amendment of the law? However repugnant it might be to the normal and settled notions of rights which a Court is likely to possess, either by virtue of the fundamental concepts of common law, or even the previously enacted law of property and vested rights, the answer seems to be that Government are not bound. I think it is sufficient, in this context, to refer to two decisions of the Supreme Court. The first is the decision in *Commissioner of Income Tax, Delhi v. Teja Singh* (1959) S.C.J. 425 : (1959) 1 M.L.J. 4 : (1959) 1 A.W.R. 154, the second is *M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.*, Both these decisions are concerned with legal fictions, and both cite and approve the observations of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* L.R. (1952) A.C. 109.

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

In the light of that decision, Gajendragadkar, J. actually observes (page 711):

Prima facie it may appear somewhat strange that an order which was good and valid when it was made, should be treated as patently invalid and wrong by virtue of the retrospective operation of the Amendment Act. But such a result is necessarily involved in the legal fiction about the retrospective operation of the Amendment Act.

Under those circumstances, it seems to be irrefutable that no rights of the plaintiff in the Court below are saved by Section 20 of the Act, that this village vested in the Government by virtue of the notification under the provisions of Madras Act XXVI of 1948, and that all such rights created prior to the notification, such as the rights under the permanent cowle of 1874, ceased and determined as against the Government.

9. The further question is a very simple one, and need not detain us long. From all the data that have been placed before me, the Government appear to have been prima facie justified in treating the plaintiff as a "ryot" and not as a "landholder". The Government appear to have collected theerwa from the plaintiff, in fasli 1359 but from fasli 1360 onwards they have admittedly collected theerwa from persons cultivating under the plaintiff who seem to have advanced claims to kudiwaram rights. I may here notice that the scheme of the Act with reference to Sections 11 (ryotwari patta), 16 (assessment), 22 (settlement), etc. was also dealt with by Rajagopala Ayyangar, J. in his unreported judgment in C.M.P. Nos. 5156 and 5163 of 1951, from which decision a Writ Appeal was filed, which was dismissed by the learned Chief Justice and Panchapakesa Ayyar, J. in W.A. No. 83 of 1954. It is sufficient for me to observe that there can really be no question of accounting, nor any question of a trust by implication, and that the decree of the lower Court must be vacated in this respect also. The real question is whether the plaintiff in the Court below is alone entitled to ryotwari patta for the entire area of the hamlet, or whether other persons cultivating under him are also entitled to pattas in respect of areas in their actual occupation. Here, I think that the learned Subordinate Judge has not rightly appreciated the situation or the position of law, as laid down in Tallaparagada Subba Row and Another Vs. Gopisetti Narayanaswami Naidu Garu Receiver Niddadavole Estate, . Certainly there can only be one "ryot" in respect of a particular holding, but where, as in this case, the settlement itself is to take place, or is proceeding, we cannot make any assumption that this hamlet or area must be treated as only one holding, or that it must be treated as constituted of a number of holdings for which separate pattas must issue. That entirely depends upon the particular facts, and it is sufficient to notice that, u/s 23, there is specific procedure for the determination of land revenue before the ryotwari settlement is actually brought into force. As the learned Government Pleader claims, Madras Act XXVI of 1948 and the rules framed thereunder constitute a complete scheme for the determination of all such questions in estates taken over, as a process of settlement. Such decisions can only be taken in the presence of all the parties

affected, including the so-called under-tenants of the plaintiff, from whom Government have actually collected theerwa during the concerned faslis. The plaintiff (respondent) may certainly apply to the proper authorities for determination of this question, claiming ryotwari patta for the entire area, if he so desires, and the matter should be properly determined by the relevant authorities in the presence of all the parties. The learned Government Pleader claims that there is a hierarchy of authorities provided, so that the decisions can be canvassed before the appropriate Officers or Tribunals. After the status of the plaintiff (respondent) and the so called under-tenants has been determined by such decisions, consequential decisions can be taken about the treatment of the collections during the prior faslis.

10. With these observations, the appeal is allowed, setting aside the judgment and decree of the lower Court. The parties will bear their own costs.