

(1968) 11 MAD CK 0044

In the Madras High Court

Case No : Second Appeal No's. 473 and 474 of 1903

The State of Madras

APPELLANT

Vs

M. Doraipandian alias Subba Naicken and Others

RESPONDENT

Date of Decision : 20-11-1968

Acts Referred:

Madras Estates Land Act, 1908 — Section 11, 13, 15, 16, 17

Survey and Boundaries Act — Section 13, 3

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 11, 12, 18, 19, 20

Citation : (1969) ILR (Mad) 623

Hon'ble Judges : Srinivasan, J;Sadasivam, J

Bench : Division Bench

Advocate : V. Ramaswami, Additional Government Pleader, for the Appellant; R. Sundaralingam, V. Vedantachari and K. Vedantham, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—In Original Suit No. 38 of 1958, District Munsif's Court, Palani, the Plaintiff sued for a declaration of his exclusive right to fishery in four tanks in Periammapatti village and for a permanent injunction to restrain the State of Madras, the first Defendant, from interfering with such right of the Plaintiff. In Original Suit No. 203 of 1958 on the file of the same Court, a similar declaration was sought by the Plaintiff therein that he and Defendants 2 to 5 were jointly entitled to the fishery right in three tanks in Andipatti Tillage. Though the Plaintiffs in the two suits are different, the basis of their contentions and the alleged source of the right claimed were identical. According to the respective claims, these tanks were constructed by the ancestors of the Plaintiffs and were recorded as the private tanks of the Plaintiff's predecessors-in-title. It was also stated that the maintenance and repairs of these tanks were done only by the Plaintiffs and their predecessors-in-title. The fishery rights were also enjoyed by them and it was claimed that the proprietors of the estate of Rettayambadi, in which the two villages are situated, never interfered with the enjoyment of such

rights; nor did these proprietors exercise at any time any rights over these tanks. In 1872, the then proprietor of the . estate filed a suit in the District Court of Madurai against the predecessors-in-title of the Plaintiff in Original Suit No. 203 of 1958, seeking to enforce his rights with regard to the tanks. The suit ended in a compromise and a decree was passed on the basis of a registered agreement of compromise. Subsequently, this agreement was modified by another registered agreement in 1875. It was claimed by the Plaintiff in Original Suit No. 208 of 1958 that by virtue of tills agreement, the exclusive right of the Plaintiff's predecessors-in-title with regard to the three tanks in Andipatti village was recognised and this recognition was followed up by the issuance of pattas by the proprietor. After the passing of the Madras Estates Abolition Act, the State attempted to interfere with such rights and it was the issue of a notice by the Estate Manager seeking to auction fishery rights in the above three tanks that led to the suit.

2. With regard to the four tanks which are the subject-matter of Original Suit No. 38 of 1958, the claim put forward by the Plaintiff therein was identical. It was alleged that the Plaintiff's ancestors constructed these tanks to ensure supply of water to their own ryoti lands. In like manner as in the other suit, the then proprietor of Rettayambadi estate filed a suit Original Suit No. 6 of 1870, seeking to declare that he was entitled to the four tanks. In this suit also, there was a compromise which was incorporated in a registered agreement and a consent decree was passed in terms thereof. According to the Plaintiff, the then proprietor conceded the position that the Plaintiff's ancestors constructed the tanks and conceded also the right of the Plaintiff's grandfather to the absolute ownership of the tanks, fishery rights, trees on the bunds, etc. Some long time afterwards, disputes arose, and the Plaintiff's father filed Original Suit No. 28 of 1931, Sub-Court, Dindigul, which upheld the right of the Plaintiff's father to the ownership of the tanks and other associated rights. The Plaintiff came to Court alleging that the action sought to be taken by the first Defendant in the two suits, the State of Madras to lease out the fishery rights after the passing of the Estates Abolition Act interfered with the long established claims of the Plaintiff, and that the above said Act could not affect the Plaintiff's right to ownership of the tanks and the right of fishery therein. The suit was thus laid for a declaration and for an injunction.

3. The contention of the principal Defendant, the State of Madras, was that these tanks have always been recorded in the village accounts as tanks poramboke; the tanks were not constructed by any private individual; they were only communal tank which by force of the enactment--Act XXVI of 1948, Section 3(b) thereof -- vested in the Government; and equally the fishery right and the right of the trees on the tank bunds also became vested in the Government. In so far as the suit Original Suit No. 28 of 1931, Sub-Court, Dindigul which purported to declare the right of the Plaintiff's father in Original Suit No. 38 of 1958, was concerned, the State of Madras contended that it was not bound by that decision, not having been a party thereto. It was also claimed that by force of the

enactment, the estate vested in the Government free from all encumbrances and that all agreements which bound the landholder ceased to be operative on and after the notification.

4. The learned District Munsif took the view that these tanks have always been regarded as being located on poramboke lands. He pointed out that the zamin survey took place in 1915. Thereafter, the area covered by these tanks was recorded as tank poramboke in the registers. According to the karnam, who was the only witness examined on behalf of the first Defendant, the State of Madras, the Survey and Settlement register of Andipatti village, exhibit B-1, was prepared in 1927. Though it was not as a result of any decision rendered by the survey authorities or as a matter which was agitated u/s 13 of the Survey and Boundaries Act, the fact that these tanks were to the knowledge of the Plaintiffs in the suits regarded as. tank porambokes could not be underestimated. He then examined the recitals in the agreements which virtually form the basis of the rights claimed in the two suits. He found that there were clauses therein which established the right of the landholders to collect water rate in respect of any dry lands cultivated with wet crops with the water from the tanks, and which further limited the right of the Plaintiff's predecessors to the trees on the bunds, etc. He also found that the Plaintiff's predecessors-in-title were liable to pay fishery rentals even under the agreements. He further found that though the pattas granted by the proprietors covered a large extent, 2,000 kulis in one and 4,500 kulis in the other, there was a. clause whereunder the pattadar was not called upon to pay any rent in respect of land covered by the tanks; that is to say, there was a virtual exclusion of the area covered by the tankbed and its water spread from the ambit of the patta engagement between the parties. Examining the impact of Act XXVI of 1948, the learned District Munsif was of the view that the entire estate, inclusive of all the rights of even ryots, vested in the Government by virtue of Section 3 of the Act and that the rights created by the proprietor in favour of the Plaintiffs' predecessors-in-title in the two suits by reason of the agreements entered into between the parties ceased and determined u/s 3 (c) of the Act, He was also satisfied that besides the Plaintiffs there were other ryots who had rights to irrigation under the tanks, a position which militated against the Plaintiffs' claim to the exclusive ownership of the tanks. He accordingly held that the Plaintiff's right, however good it might have been before the passing of Act XXVI of 1948, came to an end after the passing of the Act and on the notification of the villages. He dismissed the two suits.

5. The two appeals filed by the Plaintiffs--Appeal Suit Nos. 231 of 1961 and 232 of 1981, on the file of the District Judge, Madurai--were disposed of by a common judgment. It would suffice to say that the learned District Judge took the view that the pattas granted to the Plaintiffs' predecessors-in-title included the tank and the waterspread. It would accordingly mean that the Plaintiffs' predecessors-in-title became ryots in respect of the area covered by the tankbed and the waterspread as well. He reached this conclusion principally on the basis of the contents of the agreements in the suits of the year 1870 and 1872,

wherein the then proprietor of Rettayambadi estate purported to concede the fact that the Plaintiffs' predecessors-in-title had constructed the tanks. He did not examine the other aspects adverted to by the learned District Munsif, such as the various clauses in the agreements, which operated to limit the rights of the Plaintiffs' predecessors-in-title, in relation to the use of the water from the tank, the right to the trees on the bund, and the like. Starting on the basis that the pattas included the area covered by the tankbed and the waterspread, the learned District Judge next proceeded to examine whether the tanks could thereafter be regarded as communal property. He held that if a ryot constructed a tank on his patta land it would not take the land covered by the tank out of his patta or convert it into any category of land, other than ryoti land. He held accordingly that once the tanks were part of the ryoti lands of the tenants, the Government cannot interfere. He was further of the view that the vesting contemplated by Section 3 of Act XXVI of 1948 would not extend to ryoti-lands, for the scheme of the Act was not to disturb the ryot from his possession of ryoti land but only to remove the middle man, the proprietor. He was of the opinion that the tanks could not be regarded as communal tanks and that the Plaintiffs were entitled to the declaration sought for. He reversed the decrees of dismissal of the trial Court and granted decrees in favour of the Plaintiffs.

6. The first Defendant, the State of Madras, appeals.

7. It will be noticed at the outset that in the two suits the right that was urged and that was sought to be established was only the right to the fish in the tanks, and it was when the State, after the notification under Act XXVI of 1948, sought to lease out the fishery rights by public auction that the respective Plaintiffs came to Court for establishing their exclusive right to the fishery and to restrain the State from interfering with such right. It was only this limited right that was urged in the two suits. The contention of the Appellant, the State of Madras, is very simple. It is merely that on and after the passing of the Act and the notification issued thereunder, these fishery rights vest in the Government. It is not a case where the Plaintiffs urged the existence of any customary right, Apart from pleading that under the provisions of the Estates Abolition Act, these fishery rights vest in the Government the Appellant also pointed out that the Plaintiff's predecessors-in-title were paying rents for the exercise of this fishery right to the then proprietor, that the tanks had been registered as poramboke tanks without any objection from any persons and that wet assessment was being collected by the then proprietor. All of these facts, according to the State, went to show the proprietary ownership of the tanks by the proprietor along with all rights associated therewith. We shall examine this contention in due course. But, at this stage, we shall set out the several contentions put forward by the Respondents, the Plaintiffs.

8. Mr. Vedantachari, appearing for the Respondents, urged that these were not tanks which Would fall within the definition contained in Section 3(16)(a) of the Madras Estates Land Act and that these are private tanks constructed by the

Plaintiff's ancestors or predecessors-in-title. Apart from this, it was claimed that the pattas granted by the proprietor cover the area of these tanks and their waterspread with the result that by the operation of Section 6 of the Madras Estates Land Act, the waterspread of the tanks become part of the holdings. It is the further contention that pattas were granted by the proprietor in pursuance of the above position. Even otherwise, the claim is put forward that the compromises in the two suits represent lawful engagements between the ryots on the one hand and the proprietor on the other and it is stated that these compromises include the tanks and all the rights therein. The next flank of the argument is that assuming that they are not within the holding of the ryots and consequently part of the pattas, and assuming that these tanks are constructed on land belonging to the proprietor, that is, in the sense they were located upon waste land in the estate, the claim is put forward that these tanks constitute improvements to the ryots' holdings, that they are appurtenant to the holdings and that even according to the provisions of the Estates Abolition Act, Section 11 thereof, the area covered by these tanks ought to be included in the pattas to be granted to the ryots after the passing of the Estates Abolition Act. Alternatively, it is contended that the provisions in the compromises operate as a grant and that by virtue of Estates Abolition Act, the right of the Plaintiffs in these tanks cannot be interfered with except in accordance with that provisions.

9. Before examining these contentions we may deal with the broad factual position as it emerges from the evidence and deal principally with the argument that subsequent to the suits in which the compromises were entered into, the ryots were granted pattas on the basis that the waterspread of these tanks were included in their holdings.

10. There is hardly any room for dispute that the extent covered by the waterspread of these tanks did not form part of the pattas or of the holdings of the Plaintiff's predecessors-in-title prior to the two suits and the compromise therein. The very foundation of the claim of the Plaintiffs is that it was under these compromises that the proprietor recognised the right of the Plaintiff's predecessors-in-title, based upon the fact that the tanks had been constructed by them. If the tanks already stood upon patta land, pattas for the holdings inclusive of the area covered by the tanks having been granted by the proprietor, the suits filed by the proprietor for recovery of the tanks in the years 1870 and 1872 would have been meaningless. We can, therefore, safely proceed upon the basis that the tanks were constructed upon waste land which did not form part of the holdings of the Respondents-Plaintiffs predecessors-in-title. Exhibit A-1 in Original Suit No. 203 of 1948, out of which Second Appeal No. 474 of 1963 arises, is the agreement entered into between the parties in Original Suit No. 17 of 1872. In this second appeal, we are concerned with the rights of fishery in three tanks in Andipatti village. The suit Original Suit No. 17 of 1872 that was filed by the proprietor leading to this agreement, exhibit A-1, however covered only two tanks in Andipatti village, the tanks being Rayakulam and Periakulam. In exhibit A-1, the following recitals are found which relate to the two tanks

which are described therein as irrigation tanks. It stipulates that the Plaintiffs' predecessors-in-title (we shall refer to them as ryots in what follows) shall effect the repairs to the two irrigation tanks of Rayakulam and Periakulam at their own expense,, as the tanks had been formed by their own efforts in Andipatti village. Nevertheless, the ryots are directed to pay swarnadayam tax of Rs. 10 per year per tank in view of their enjoying the fish available in the two irrigation tanks. It states that the ryots shall have no manner of right or interest over the trees standing on the bunds of the irrigation tanks. It is confirmed further that the ryots shall enjoy only 4,500 kulis in Andipatti village. It provides for a measurement of this extent and for either party making good the deficit or by surrendering the excess to the other party. One important recital in this regard is that out of the 4,500 kulis of land to be in the possession of the ryots, the proprietor shall not demand theerva in respect of the extent covered by the waterspread of the two irrigation tanks of Rayakulam and Periakulam. The ryots shall not have also the right of cultivating nanja or punja crops in the waterspread. The other parts of this agreement also stipulate that the ryots shall not cultivate wet crops in punja lands and that they shall have no right to cut the trees. There is also an important stipulation that punja land on which wet crops were grown in contravention of the conditions would revert to the landholder. Exhibit A-1 in Original Suit No. 38 of 1948 (Appeal No. 473 of 1963) contains recitals which are substantially similar to those which we have extracted above in relation to the other suit. This is an agreement, which was entered into during the progress of the suits, Original Suit No. 4 to 8 of 1870, filed by the then proprietor against the predecessors-in-title of the Plaintiff-Respondent in this second appeal. In this suit and second appeal, four tanks lying in Periammapatti village are concerned. A similar recital as to the exclusion from rent of the land covered by the water-spread of these tanks is found herein. There is a special provision by which the ryot is directed to pay a certain sum as swarnadayam tax for enjoying the right of fishery in the tanks.

11. A careful examination of the contentions that were put forward in the suits of the year 1870 and 1872 clearly establishes the fact that the proprietor disputed the right of the ryots with regard to these very tanks and though certain expressions found in the two agreements entered into do indicate that the tanks had been dug by the ryots, the predecessors of the Plaintiffs in the" two cases, they were nevertheless not included in the pattas of the ryots. The landholder was apparently willing to allow the ryots to utilise the water from the irrigation tanks for the patta lands, but prohibited them from enlarging the extent of such irrigation without paying theerva to him. The fact that the waterspread of the tanks was not to bear any rent is significant, and though the pattas envisaged certain specified total extent, the liability for rent was only in respect of the area excluding the waterspread of the tanks. Nor do we find that in the pattas that were granted subsequently, there was any change in this position. Clearly then, the patta covered only that extent exclusive of the waterspread of the tanks as the extent of the holding granted to the ryots. We are unable to agree with Mr.

Vedantachari that the pattas included the waterspread of the tanks and that as a result the ryots obtained occupancy rights in relation to those extents as well.

12. We shall first of all examine the contention advanced by Mr. Vedantachari that by the operation of" Section 6 of the Madras Estates Land Act, the Respondents herein have obtained a permanent right of occupancy in the area covered by these tanks. This section confers an occupancy right on every ryot.

Now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land.

The possession contemplated by this provision is in terms relevant to possession of ryoti land. A ryoti land is defined by Section 3(16) of the Act as cultivable land other than private land, but does not include beds and bunds of tanks. Admittedly, on the date of the passing of Act I of 1908, the tanks were already in existence and the possession by the ryots of these tanks, even if such possession can be conceded on the facts of these cases, cannot possibly amount to possession of ryoti land. Whether the tanks were tanks constructed by the landholder or by the ryots makes no difference to a reasonable interpretation of Section 6 of the Act. It may be that the bed of tanks and the water spread of the tanks may be regarded as cultivable land, but Section 3(16) in defining ryoti land, expressly excludes beds and bunds of tanks. This is apart from the further operation of Section 3(16), which also excludes lands of any kind situated in the estate set apart for the common use of the villagers. For the purpose of the present argument, we may assume that the irrigation facilities afforded by these tanks were enjoyed by the Respondents and their predecessors-in-title and that these tanks were not communal tanks in the sense that all the villagers were entitled to their use though it may be that some of the other ayacutdars were so entitled. Notwithstanding that, Section 3(16), when it specifically excludes beds and bunds of tanks from the definition of ryoti land, we can hardly see how the enjoyment of the facilities afforded by these tanks can be regarded as amounting to possession of ryoti land within the meaning of Section 6. Mr. Vedantachari referred to Surendra Kumar Sen Chaudhury and Others Vs. Chandratara Nath and Others, That was a case under the Bengal Tenancy Act, where the composite lease of a holding comprising of a tank and land on the bank for rearing fish, stacking grass and grazing cattle came to be considered. The decision was that as the cattle were used for the purpose of cultivation, that is to say, for agricultural purposes, the lease of the land and the tank was an indivisible lease, that it was for agricultural purposes and as such governed by the Bengal Tenancy Act. It was observed that in order to test whether the lease was for agricultural purposes or not, the primary object of the lease had to be examined and the fact that the surrounding land was also granted was an important factor, and if the lease of that land was for agricultural purposes, the entire lease, including the tank as well, should be regarded as being governed by the Act. Another decision Nidhi Krishna Bose v. Bam Doss Sen (1873) 20 W.R. 341 no doubt lays down the broad proposition that a right of occupancy in land includes the same right in

respect of a tank appurtenant to the land; but there is an important qualification found in this very decision that such a right of occupancy cannot be acquired in a tank with only so much land as is necessary for the banks, that is to say, if the lease is only in respect of the tank and the banks, a right of occupancy cannot be acquired in the tank. It would be no doubt different if the lease of the tank was combined with the lease of other lands, which is the principle of the earlier decision cited.

13. To reiterate what has been stated earlier, there seems to be no doubt at all that the areas covered by the tanks did not form part of the holding at the time when the tanks were claimed to have been constructed. Indeed, if the tanks had been constructed on land which was part of the holding of the ryot, the suits filed by the landholder in 1870 and 1872 would have had a totally different result. The landholder in these suits sought for the recovery of the possession of the tanks and his right as proprietor to control the use of the tanks including the rights of fishery therein. The agreements entered into by the parties only reiterated the right of the ryots, the predecessors of the Respondents to the two appeals, to hold a specified extent of land in the villages with the corresponding liability to pay rent in respect of those lands. The clauses in the agreements further contemplated that the ryots were not called upon to pay any rent in respect of the area covered by the tanks. That is a clear indication that the area covered by the tankbed and the waterspread was not part of the holding, for if it was, the liability to pay rent in respect of that area would have been insisted upon. Even if we take the agreement entered into in the compromise in the two suits as amounting to a lease or other arrangement between the landholder and the ryot within the meaning of the enactments dealing with the relationship between the parties, these arrangements cover only tanks and the bunds for the arrangement with regard to the lands was not a new one but only continued the pre-existing shares of the Respondent's predecessors as ryots in relation to those lands. Obviously the principle of the decision in *Nidhi Krishna Bose v. Ram Doss Sen* (1873) 20 W.R. 341 cited above would not apply and would indicate that in such a case, a right of occupancy in a tank as such could not be acquired. We have already set out earlier that Section 6 of the Madras Estates Land Act would not apply not only for the reason that possession of ryoti land contemplated by Section 6 would exclude the tanks and bunds, but also for the reason that the area covered by the tanks was not part of the holding. Indeed, if the agreements are scrutinised carefully, they could show that the landholder while conceding that the ryots did construct the tanks, did not give up his rights in relation to the tanks for the tanks were constructed on land belonging to the landholder. The imposition of a fee for the rights of fishery in the tanks, the restriction upon converting dry lands into wet lands and the use of the water from the tanks for these lands without the permission from the landholder and the other restrictions imposed with respect to the enjoyment of the trees on the bunds, all of them give an unmistakable clue to the fact that the tanks did not form part of the holding of the ryots, and that they were the subject-matter of specific

agreements, the effect of which was not to confer occupancy right in the bed of these tanks.

14. A great deal of argument has been advanced on the assumed basis that the tanks were constructed upon the holding of the ryots. In our opinion, that is not the case as disclosed by the facts proved. On behalf of the State, it is urged that even if the tanks had been constructed upon ryoti land in the holding of a ryot, when once the Estates Abolition Act steps into the picture the ryot can no longer claim that he is entitled to a patta in respect of the tanks. Mr. Vedantaehari referred to *Sri Batchu Venkataratnam v. Secretary of State for India in Council* (1932) 2 MLJ 452. In that case, the question, was whether a particular tank belonged to the zamindar or to the Government. It would suffice to set out the gist of the decision, which was merely that an irrigation tank, which is found not to be communal property, can be taken to pass to the grantee under the zamindari grant, unless there is clear evidence of its reservation by the Government, and that the mere fact that the tank is referred to as poramboke in the village accounts will not necessarily lead to the inference that it belongs to the Government. We are unable to apply this decision to the facts of the present cases. The question that arose there was really one of the construction of the nature of the grant made to a zamindar. There was a clear finding that the tank was not communal property and the only point in favour of the Government was that it was recorded as a poramboke tank in the village accounts. A Bench of this Court refused to accept the argument that because the extent of the tank was excluded in fixing the peishkush, it should be held to be excluded from the grant altogether. The ultimate decision proceeded virtually on the basis of the single feature that it was not a communal tank and that no principle of law could be held to exclude it from the grant.

15. Considerable reliance has been placed by Mr. Vedantachari on *T.S. Srinivasa Rao, Attorney agent Vs. State of Madras and Another*, This decision principally dealt with the right u/s 12 of the Abolition Act of a landholder, to ryotwari patta for private land, and the claim was put forward by the landholder to a tank which was the source of irrigation of his private lands and which it was contended was appurtenant to those lands. It was decided therein that the tank is also land and that the definition of private land in the Estates Land Act does not exclude tanks; that it should follow that the tanks owned and used by the landholder exclusively to irrigate his private lands are part of such lands and that the landholder is entitled to a ryotwari patta in respect of such tanks. The principal reason which induced the learned Judges to hold in favour of the landholder would appear to be that in contra-distinction to the definition of ryotwari land in Section 3(16)(a) of the Madras Estates Land Act, which excluded beds and bunds of tanks, no such express exclusion is found in the definition of private land. Then the learned Judges observe that the tank was appurtenant to the cultivated private lands of the landholder. It was established that the tank was exclusively owned and used by the landholder and that the entire ayacut under the tank formed the private lands of the land-holder. The decision in *Nidhi Krishna Bose v. Ram Doss Sen*

(1873) 20 W.R. 341, already referred to, was relied upon by the Bench. Even apart from this, the view was taken that the appurtenant tank was itself part of the parcel of lands which constituted the private lands of the landholder and that the fact that the tankbed was not cultivated with the rest of the lands would not affect the determination of the question whether the tankbed also formed private land. Mr. Vedantachari seeks to apply the principle of this decision. On the other hand, it is the contention of the learned Additional Government Pleader, appearing for the State that this decision stands overruled in *Lakshmipathy v. State of Madras* ILR (1959) Mad. 915. But the contention of Mr. Vedantachari is that though the theory of appurtenance propounded to *T.S. Srinivasa Rao, Attorney agent Vs. State of Madras and Another*, was no doubt not accepted by the Full Bench in the latter case, there is nothing in the Full Bench decision which denies the right of a ryot to ownership of a tank constructed upon ryoti land and which forms part of his holding. According to Mr. Vedantachari, the Full Bench decision confined itself only to the private lands of the landholder and to a tank constructed upon such private lands and it cannot possibly apply to a ryot in relation to a tank constructed upon ryoti land. Reliance was placed upon certain observations in the Full Bench decision (at page 925):

If a ryot were to construct a tank upon a portion of his holding, it would be an improvement to the ryot's holding within the meaning of Section 3(4) of Act I of 1908, and it would only enhance the value of the holding rather than cease to be a ryoti land. It would not vest in or revert to the land-holder on the ground that not being cultivable land, it could not properly be within his holding. It is contended that as in such a case the ryot would be entitled to the patta in respect of the tank, in the case of private lands also, a tank constructed within the area of the private lands of the holder should be considered to be an improvement to the private lands and, therefore, should go with them. It must be pointed out that a tank constructed on a ryoti land is considered to be an improvement by virtue of a statutory definition for certain purposes mentioned in the statute. It cannot be stated that under the general law an irrigation tank would form part of continuous lands.

It is not necessary to examine the precise extent to which the Pull Bench disagreed with the decision in *T.S. Srinivasa Rao, Attorney agent Vs. State of Madras and Another*, for Mr. Vedantachari's contention only adopts certain stray passages in the Full Bench judgment where reference is made to the improvement of the holding by a ryot. We shall accordingly proceed to consider to what extent this argument advances the Respondents' case.

16. Section 3(3) of the Madras Estates Land Act defines a holding to mean a parcel or parcels of land held under a single patta or engagement in a single village. Assuming that the compromises and the subsequent agreements between the landholder and the ryots, the Respondents' predecessors-in-title, operate as an engagement, Mr. Yedantachari urges that since the tanks are specifically dealt with therein, they become part of the parcel of lands covered

thereby; and by; the subsequent patta granted by the landholder the entire extent of land, including" the improvement covered by the tank, is part of the holding. This argument would no doubt be plausible if the engagement and the patta did in fact cover the tankbed, bunds and the water-spread and treat them as part of the holding. We have already pointed out that though by reason of the fact that the Respondents' predecessors-in-title were partly or wholly responsible for the construction of the tanks and that fact was conceded by the landholder in the compromises, yet, the area covered by the tankbed, etc., was expressly, excluded from any liability to pay rent. The landholder also reserved certain rights to the use of the water and the agreements also placed certain restrictions upon the rights of the ryot to use the water for additional lands to be brought under wet cultivation. The significance of these facts cannot be overlooked. We do not agree with Mr. Vedantaohari that these are not indications of the facts that the parties did not regard the tankbed, etc., as covered by the patta. The mere fact that the agreements or the pattas refer to a large extent of land as so many thousands of kulis is not sufficient to our minds to bring the area covered by the tankbed, etc., within the holding under the patta. To do so would be to ignore very important covenants in the agreements and interpret a truncated part of the instruments.

17. Section 3(4) of the Estates Land Act defines an improvement. It means any work which materially adds to the value of the holding which is suitable to the holding and consistent with the character thereof. The definition further contemplates that the improvement may either exist upon the holding itself, or if not executed on the holding, is either executed directly for its benefit, or, after execution, is made directly beneficial to it. It includes the construction of tanks and other works for the storage, supply or distribution of water for agricultural purposes. If the area covered by the tankbed, etc., is not part of the holding, there is no doubt that it, can be regarded as coming within the scope of the definition of improvement. But for that reason we do not agree that the improvement itself would form part of the holding. Section 13 of the Madras Estates Land Act confers a right upon the occupancy ryot to make an improvement and it provides also for defining the subsequent rights of the ryot and the landholder in respect of that improvement. Sections 15 to 17 invest the Collector with power to determine disputed questions with regard to improvements, for the registration of the landholder's improvement and for an application by either party to record evidence as to improvement. The only right that appears to have been conferred upon the ryot in respect of an improvement made by him would appear to be that where the improvement has been made at his expense, the ryot shall not become liable to pay a higher rate of rent on account of any increase of production or of any change in the nature of the crop raised as a consequence of such improvement. But nowhere does the Act purport to vest the improvement as such in the ryot; the more so where the improvement is located not upon the holding but upon the land which is not part of the holding. It is also noteworthy that the provisions as to the exchange of

pattas and muchilikas do not confer any right upon a ryot to get an improvement not within the limits of his holding included in his patta for any purpose whatsoever.

18. It is common ground that these improvements were made long before the passing of the Madras Estates Land Act. It is no doubt true that the Respondents' predecessors-in-title were ryots even prior to the passing of this Act and that they had rights of occupancy even then. No one can dispute the proposition that such rights of occupancy existed even before the passing of the Estates Land Act. After the passing of the Act, the respective rights of the ryots and the landholder were specifically detailed, and except for the provision that in respect of an improvement constructed by the ryot, himself, the landholder could not demand an enhanced rent, no other right in relation to the improvement, such as a tank, ever existed in a ryot or was conferred upon a ryot by the provisions of the Act I of 1908. As we said, even accepting the position that the Respondents' predecessors-in-title constructed these tanks in their capacity as ryots, but upon land which was not part of the holding, they cannot claim to be exclusively entitled to the tanks, and their rights, to put it in a negative form, amount only to their non-liability to pay any excess rent by reason of the use of the improvement. We have not been shown any authority which establishes that in circumstances such as these, the ryot becomes the owner of the area covered by the tank, or was ever held entitled to a patta for that area.

19. But Mr. Vedantachari urges that u/s 11 of the Estates Abolition Act, the ryot would be entitled to a patta even in respect of the area covered by the tank. This section provides that every ryot shall be entitled to a ryotwari patta in respect of ryoti lands which immediately before the notified date were properly included or ought to have been properly included in his holding. Now, according to Mr. Vedantaohari, these tanks which are improvements caused by the ryots would come within the scope of the above provision. We are unable to agree that the area covered by the tanks can be said to be land which ought to have been properly included in the holding. In order to construe this expression, we have to be guided by the rights conferred upon the ryot by Act I of 1908, and if that Act gave no right to a ryot to have a tank of this description included in his holding, equally Section 11 of the Estates Abolition Act confers no such right. We do not think that *Arumugam Chetti v. Raja Jagaveera Rama Venkatestoara Ettappa* ILR (1905) Mad. 444 gives any support to the claim advanced on the above lines. In that case, certain occupancy ryots had constructed wells at their own cost and cultivated dry lands with garden crops. They sued the zamindar to grant them pattas alleging that the pattas granted by the zamindars were illegal, as they charged a higher garden rate for the dry lands cultivated by them as above. When the matter came to the High Court, the only point relevant to the present cases which was decided therein was that it made no difference whether the tenants constructed the wells at their cost prior to after passing of Act VIII of 1865, and that in either case, no additional rent can be claimed. This decision is no authority for the position that such improvements should be included in the

patta. Obviously, they would be, if they were already part of the holding. But where the improvement was situated outside the holding, there can be no question of its inclusion in the patta granted to the ryot. The claim that these improvements should be regarded as properly includible in the holding cannot be supported by the authority of the above decision.

20. Nor are we prepared to accept this theory that these tanks are appurtenant to the holdings. The decision in *Lakahmipathy v. State of Madras* ILR (1959) Mad. 915, is clearly against that claim.

21. The last argument advanced turns up the construction of Section 29 of the Estates Abolition Act, as it stood prior to its amendment in 1956. This section, in so far as it is material to the present cases, read thus:

Where before the notified date, a landholder has created any right in any land including rights in any forest....fisheries....the transaction shall be deemed to be valid and all rights and obligations arising thereunder on and after the notified date shall be enforceable by or against the Government.

The above right is subject to more than one provision; firstly, that the transaction was not void or illegal under any law in force at the time; secondly, that such right, if created on and after the first day of July 1945, shall not be enforceable against the Government, unless it was for a period not exceeding one year; and thirdly, if such right was created for a period exceeding one year (unless it relates to the private land of the landholder), the Government may terminate the right by notice in accordance with certain conditions prescribed in the provision. Sub-section (2) of Section 20 provides for the payment of compensation to the persons whose right was so terminated. It is the contention of Mr. Vedantachari that in so far as the fishery right is concerned, it was granted to the Respondents' predecessors-in-title as long back as in 1874 or 1875, as a result of the suits, and that since the confirmation of this right does not offend against any of the provisos to Section 20, it is not open to the Government to disregard the rights so created, unless they act in accordance with Section 20 and the provisos thereto. On behalf of the State, Mr. V. Ramaswami, learned Additional Government Pleader, urges that this section has no application to a ryot but only to third parties, and in support of his contention, referred to an unreported decision of Rajagopala Ayyangar J. in Civil Miscellaneous Petition Nos. 5156 and 5163 of 1951 P.V. Chidambaram Chettiar, Buddireddipatti v. State of Madras represented by Deputy Collector of Salem and Ors. That was a case where the Petitioner sought for the issue of a writ of mandamus to direct the State of Madras not to collect the rents in respect of the Petitioner's lands held under patta in Buddireddipatti mitta, a notified estate. The contention of the Petitioner was that he was entitled to ryotwari patta u/s 11 of the Estates Abolition Act and that as he and his predecessors had acquired by contract with the mittadar certain rights, these rights stood saved by Section 20 of the Act. After referring to the several sections of the Act, the learned Judge accepted the argument on behalf of the State that Section 20 deals with the creation of

interests by landholders in favour of individuals other than ryots and that so far as the relationship between the landholder and the ryots are concerned, the relevant provisions are Sections 3(g), 11 and 16 of the Estate Abolition Act. After pointing out that the enactment authorised the collection of rents either previously paid to the landholder till the determination of fair rent under Act XXX of 1947 or rents payable for similar lands, the learned Judge observed that Section 20 would not apply to the relationship of the Government and the ryotwari pattadar and that it is inapplicable to the case of a ryot in an estate as regards the quantum of assessment payable by him to the State. The large claim made by the learned Additional Government Pleader that Section 20 cannot apply at all to ryots does not impress us. The decision referred to only points out that no ryot could rely upon Section 20 in so far as the fixation of the rents for the lands covered by his holding is concerned, for that would be a matter to be covered by Section 11 and other corresponding sections. A person may be a ryot, but at the same time, he may take on lease a quarry from the landholder. His status as a ryot will have no impact upon a contractual relationship entered into in that manner and the claim made by the learned Additional Government Pleader that Section 20 cannot be invoked in any circumstances by a person who happens to be a ryot cannot be accepted. That argument is sound only to the extent that Section 20 cannot govern the rights as between the ryots and the Government in relation to the quantum of assessment on the land covered by the patta.

22. Before we deal with the further argument centering upon Section 20 of the Abolition Act, we shall refer once more to the contention of the State. It is principally that by virtue of Section 3(6) of the Abolition Act, the entire estate stands transferred to the Government and vests in them free of all encumbrances, and that u/s 3 (c), 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. Clause (e) of Section 3 is also relied upon, which is to the effect that . any person, including the principal or any other landholder, whose rights stand transferred u/s 3(b) or cease and determine u/s 3 (c) shall be entitled only to such rights and privileges as are recognised and conferred upon him by or under the Act. Reliance is further placed upon Section 3(g) which lays down that any rights which may have accrued in the estate to any person before the notified date against the principal or any other landholder shall cease and determine and shall not be enforceable against the Government or such landholders, and every such person shall be entitled only to such rights and privileges as are recognised or conferred upon him by or under the Act. The learned Additional Government Pleader refers to these provisions as positively establishing" that no person, whether he be a ryot or not, can on and after the Abolition Act claim any rights in the estate. It is contended that even the rights which a person had as a ryot in the ryoti lands in the estate would come to an end and that it is only by virtue of Section 11 that such a person can obtain a patta, which represents a different engagement between the State and the

erstwhile ryot. It is not necessary for us in this case to canvass the correctness of this argument that even the ryoti interest is lost. The lower appellate Court has referred, to certain decisions, *State of Madras v. Karupiah Ambalam* (1959) 1 M.L.J. 185, where it was held that in respect of lands in a village taken over by the Government under the Act, there is no question of any private ownership by an individual till that person obtains a ryotwari patta from the Government and *Susai Udayar v. Andiyappan* (1959) 1 M.L.J. 195, where it was observed that the Act sought to bring about a direct relationship between the State and the cultivator by eliminating the intermediary in the shape of the landholder and that object was achieved by the Government acquiring the entire estate and by granting ryotwari patta on the basis of a fresh tenure. After referring to the several provisions of the Act, it was said that the effect of these provisions is

It was further stated that the right to obtain ryotwari patta is a new right created by the statute. The contention of the learned Additional Government Pleader on behalf of the State that even the ryot's interest in the land is destroyed and a fresh right is conferred upon him by reason of the other provisions of the Act is no doubt supported by these decisions. But, another view is also possible viz., that in so far as the ryoti lands and ryots in lawful possession of them under patta engagement with the landholder are concerned, the Act did not disturb their right or possession, though the machinery established for the grant of ryotwari patta was intended only to secure those rights in the shape of a different tenure. Section 3 itself starts by saying that

Save as otherwise expressly provided in that Act the entire estate shall stand transferred to the Government.

If we examine Section 3, Clause (6) closely, the entire state is described thus:

The entire estate (including all communal lands and porambores, other than non-ryoti lands, waste lands pasture lands, lanka lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries)...

The deposition is no doubt an inclusive one; but with such detailed specification to what the entire estate consists of, it is interesting to notice that ryoti lands are left out from this specification. The omission appears to have some significance, and it is possible to construe it as meaning that ryoti lands in the possession of ryots are not so taken over. u/s 3(d) the Government have been conferred with the power of taking possession of the estate and all accounts, registers pattas, muchilikas and other documents relating to the estate after removing any obstruction that may be offered. But a proviso to this clause prevents the Government from dispossessing any person from possession of any land in the estate in respect of which they consider that he is prima facie entitled to ryotwari patta. This proviso which cuts down the amplitude of the power conferred upon the Government to take possession of the estate, read along with the significant omission of ryoti lands in the detailed description of the estate occurring in Section 3(6) of the Act may, well connote that it was not the intention of the

Government to disturb the position of the ryot in so far as he is in possession of ryoti land under a proper engagement between himself and the erstwhile landholder. Indeed the Act itself was enacted for the purpose of removing the intermediaries, and the long title of the Act clearly states that it is intended to provide for

the repeal of the permanent settlement, the acquisition of the rights of the landholder in permanently settled and certain other estates in the Province of Madras and the introduction of the ryotwari settlement in such estates.

If the object then is to remove the intermediary from the scene and to establish a direct relationship between the State as the overlord and the ryot as the cultivator,, it would not have been the intention of the Act to deprive the ryot of his title to or possession of the holding, and it is quite possible to look upon the other provisions relating to the grant of ryotwari pattas as a machinery only intended to confirm the pre-existing rights of the ryots though in a different form. It is however, unnecessary to express our view upon the extreme interpretation placed upon these provisions by the two decisions cited above, that even the rights of a ryot are destroyed and fresh rights are created in them by operation of the Act, for as we have said earlier, we are concerned only with the fishery rights in the tanks. We have already pointed out that even the suits of the year 1870 and 1872 show that the Plaintiffs' predecessors-in-title were already ryots of certain ryoti extents and those suits were laid by the then proprietors for the purpose of recovering the rent due upon the holdings and for a declaration of the proprietor's title to the tanks. The subsequent agreements entered into between the Plaintiff's predecessors-in-title and the proprietors did not mark the commencement of a ryot-landholder relationship in so far as the ryoti lands are concerned. The Plaintiff's predecessors-in-title were already ryots and the only further, right created by the agreement in those suits was of the fishery right in the tanks on payment of certain sums to the proprietors. We shall, therefore, confine our-selves only to these fishery rights and examine to what extent the provisions of the Estates Abolition affected those fishery rights.

24. Section 3(6) of the Act did certainly effect a transfer to the Government of the tanks and fisheries as well. There can be no disputing that proposition. Section 3 (c) also puts an end to any rights and interests created in and over the estate by the principal or any other landholder before the notified date. In either of these cases, Section 3 (e) steps in and makes it clear that any person whose rights are transferred by operation of Clause (b) or cease and determine under Clause (c) shall be entitled only to such rights as are conferred or recognised by the other provisions of the Act. Clause (g) which refers to rights and privileges which may have accrued to any person before the notified date, which also cease and determine on the notified date, is to a similar effect, namely, that any such person shall be entitled only to such rights and privileges as are recognised and conferred by or under the Act. It would follow, therefore, that notwithstanding the transfer of the fishery right or the cessation of any right or interest created

by the landholder before the notified date, a person claiming to have been in enjoyment of such a right prior to the notified date can invoke the appropriate provisions of Act and ask that such, rights and privileges as are claimed by him should be recognised in terms of the provisions of the Act. It is in that context that we have to examine whether the rights claimed by the Plaintiffs survive to them by reason of any of the provisions of the Act.

25. The learned Additional Government Pleader referred to the *The State of Madras Vs. Kamakshia Pillai and Others*, . In that case, a tank was situated on a poramboke land in an estate and the ryots had been enjoying the customary right of fishing therein. The question arose whether after the estate had been taken over, the customary right claimed by the ryots to the fish in the tank was also liquidated thereby. On a reference by Ramaswami J., the matter came before a Bench and the learned Judges point out that the entire estate would include the tank and the right to fish therein which is also immovable property. The second appeal which came before the High Court arose out of a suit filed by the ryots who were prevented from exercising their rights to fish in the poramboke tank after the notification and they sought for a declaration of their title to the tank as well as their customary right to fish. The two arguments advanced in support of the Plaintiffs' stand were that this customary right of fishing would fall outside the scope of vesting contemplated by the Abolition Act, and secondly, that there can be no vesting unless what is vested was compensated for, both of which arguments were repelled. In that case the trial Court had dismissed the Plaintiff's suit, but on appeal, the first appellate Court had granted a declaration that the Plaintiffs were entitled to a customary right of fishery. The High Court set aside this decree of the lower appellate Court which granted an injunction against interference with that right. But the question was not examined in that decision whether any right or privilege was claimed or saved to any extent by the other provisions of the Act, as indicated in Clauses (e) and (g) of Section 3.

26. We may now take it as beyond controversy that this right of fishery in these tanks was conferred upon the Plaintiff's predecessors-in-title by the agreements entered into in the suits of the years 1870 and 1872. We shall examine the extent to which Section 20 of the Act saves the right claimed. This section, as it stood prior to its amendment, stood thus:

Section 20(1)-In cases not. governed by Sections 18 and 19, where before the notified date the landlord has created any right in any land (whether by way of lease or otherwise including rights in any forests, mines or minerals, quarries, fisheries or ferries, the transaction shall be deemed to be valid and all rights and obligations arising there under on and after the notified date shall be enforceable by or against the Government.

There were several provisos to this Sub-section the first of which was that the transaction was not void or illegal under any law in force at the time. Another proviso states that if such a right was created on and after the first day of July

1945, it shall not be enforceable against the Government, unless it was created for a period not exceeding one year. A third proviso read that where such a right was created for a period exceeding one year and it did not relate to private lands of the landholder, the Government may

if in their opinion it is in public interest to do so by notice given to the person concerned, terminate the right with effect from such date as may be specified in the notice, not being earlier than three months from the date thereof.

Sub-section 2 of this section provided for a right to compensation for the determination of the right under the above proviso. This section was extensively amended by Madras Act XLIV of 1956. But so far as we are concerned, it would be sufficient to refer to Section 20, Sub-sections 2 (a), (b) and (c). Broadly stated, these provisions deal with the creation of any such right (such as fishery right) before the first day of July 1945, for a period exceeding one year. Sub-section 2 (a) states that in the case of the creation of such a right, it would be open to the Government to terminate that right after giving notice to the person interested. Clause (6) of Sub-Section 2 entitles the person so deprived of the right to compensation. Clause (c) of Sub-section 2 is important in that it declares that where any such right created before the first day of July 1945, is not determined under this Sub-section the transaction whereby such a right was created shall be deemed to be valid and all rights and obligations, thereunder on and after the notified date shall be enforceable by or against the Government. There is no disputing the fact that the right to fish on payment of certain rentals was created in favour of the Plaintiffs", predecessors-in-title by agreements entered into before the first day of July 1945. We have already pointed that under clauses "(e) and (g) of Section 3, the Act contemplates the recognition of such rights by or under the other provisions of the Act, notwithstanding the transfer of the estate or the determination of rights created in the estate under Clauses (6) and (c). Section 20 was clearly intended to provide for the manner in which these transferred or determined rights are to be-recognised and if so, to what extent. It should, therefore, follow that where the landholder has conferred the right of fishery in a tank situated in his estate in the distant past, certainly before the first day of July 1945, and the creation of such a right is not void or illegal under any law in force, that right cannot be determined except as provided for by Section 20 of the Act, and the section clearly postulates that the Government, if they think it is in the public interests to do so, can terminate this right by taking proceedings under this section and not otherwise." Indeed, Sub-clause (c) of Sub-section (2) of Section 20 lays down that if the right created by the first day of July 1945, is not terminated in the manner set out in this section, such right shall be deemed to be valid and all rights and obligations arising thereunder shall be enforceable against the Government. It appears to us clear that it is not open to the Government to claim that this right has been put an end to merely by pointing to Section 3(6) .or (c) of the Abolition Act. The saving of these rights is contemplated by Section 3(g) itself and the manner in which such a right can be put an end to is provided for by Section 20 of the Act. The position

is no different even if Section 20 as unamended applies. So long as the Government have not taken the steps indicated in Section 20 of the Act, this right shall by virtue of that provision be deemed to be valid and be enforceable against the Government as well.

27. In the view that we have taken, we are satisfied that while the large claim made by the Plaintiffs that they are the owners of the tanks or that these tanks form part of their patta holdings is not established, their claim that the right to fish in the tank was conferred upon them lawfully and that right cannot be interfered with by the Government must be partly accepted, that is to say, this right cannot be determined unless the Government take appropriate steps u/s 20 of the Act. It should follow that till that is done, the Plaintiffs are entitled to exercise the right of fishery in these tanks. The judgment of the lower appellate Court in so far as it granted the declaration that the Plaintiffs are entitled to the fishery rights in the concerned tanks is correct and will be confirmed. As we have pointed out, there is adequate provision in the Act which would enable the Government to deal appropriately with the matter and put an end to that right, if they think fit to do so. We agree with the learned Subordinate Judge, that it is not necessary to grant an injunction against the Government.

28. The judgment and decree of the lower appellate Court are confirmed to the extent indicated above and the appeals are dismissed. In the circumstances of the case, we direct the parties to bear their own costs in these appeals.