
(1958) 12 MAD CK 0002
In the Madras High Court

The State of Madras

APPELLANT

Vs

S. Krishnasami Ayyangar and Others

RESPONDENT

Date of Decision : 04-12-1958

Acts Referred:

Tamil Nadu Irrigation Cess Act, 1865 — Section 1

Citation : (1959) 72 LW 461 : (1959) 2 MLJ 127

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

Bench : Division Bench

Judgement

Ramachandra Iyer, J.—This Second Appeal arises from the decree of the Additional District Judge of Tiruchirappalli in A.S. No. 220 of

1955 reversing that of the District Munsiff: of Tiruchirappalli in O.S. No. 411 of 1951. The State of Madras represented by the Collector of

Tiruchirappalli, the defendant in the; suit, is the appellant.

2. The suit was filed for a declaration that the plaintiffs as the riparian owners of the Uyyankondan river in Tiruchirappalli district were entitled to

bale out water from the river free of tax for the irrigation of their inam lands in Sendanipuram village, and for refund of Rs. 100 collected from them

by way of tax. Inam Sendanipuram which comprises of an extent of 144.29 acres is a hamlet of the village of Varaganeri in Tiruchirappalli District. It

was originally granted as a personal inam to one Karibulla Sahib in 1875 by the Carnatic rulers. The grant was recognised and confirmed by the

British Government. Ex. D-3 is an extract of the fair inam register in regard to this village. The northern boundary of Sendanipuram is

Uyyankondan river This river is connected with the river Cauveri and it is said to have been in existence from time immemorial. Respondents who

were successors in interest to the grantee of the inam have been irrigating the nanja lands with the river water. As the lands are in a level higher than the level of the water of the river the respondents have constructed six piccotas in the; river, one of them being in the middle of the river for the purpose of raising the water. The structures are masonry ones. Admittedly the Government did not levy any cess for the taking of water by the respondents all these years till 1950. It is stated that owing to enmity between the respondents and the karnams, a cess was levied for the first time in F. 1359, which cess the plaintiffs-respondents paid under protest. The respondents claimed that they were entitled to take water from the river for agricultural purposes by reason of the riparian rights that they had in respect of the waters in the river, and that they were not liable to pay the tax levied by the Government. They, therefore filed the suit as stated above.

3. The suit was contested by the appellant. The appellant stated that Uyyankondan river was a Government channel, in which the respondents could have no rights, and that in any event the respondents had no right to convert what were once dry lands into nanja lands by the use of Government water. They, therefore, stated that the respondents were liable to the cess levied.

4. The District Munsiff held that Uyyankondan river was not a natural stream but a Government channel, that there was no evidence of any express or implied engagement for the supply of water by the Government, and that therefore the respondents were liable for the cess levied on them. On those findings, he dismissed the suit.

5. The respondents thereupon filed an appeal to the District Court of Triuchirappalli. The learned District Judge held that as the river was the northern boundary of the inam village and adjoining the nanja lands of the village and as the lands have been cultivated openly for more than 80 years with the water in the channel which belonged to the Government the respondents were entitled to take water from the channel as usual without liability; to pay any irrigation cess. In that view, he allowed the appeal and decreed the suit as prayed for. Hence this appeal.

6. The liability to water cess is governed by Section 1 of the Madras Irrigation Cess Act, VII of 1865. That section authorises the levy of cess for water supplied or used for the purposes of irrigation from any river, stream, etc.

belonging to or constructed by the Government. There is a proviso to the section in regard to inams and zamindari. The learned District Judge considered the several cases on the subject and came to the conclusion that in the circumstances of the case, it should be held that the respondents were entitled to use the water in Uyyankondan river free from the payment of tax by virtue of an engagement or by virtue of their riparian rights. Under the grant the river is stated to be the northern boundary of the property granted; in inam. It is, therefore, clear that the river as such was not intended to be part of the grant. In the view I am taking of the case in regard to the Triparian right claimed by the respondents it is unnecessary to consider for the purpose of this case whether notwithstanding the fact that the river as such was not granted to the inamdar there could be a presumption that a riparian owner owns half the bed of the river. This point has been discussed, in Carlson and Forbes on the Law of Waters and Land Drainage, VI Edition, at pages 114 to 116.

7. The Grant however gives the grantee all the rights over the property granted. If the property granted has certain natural rights it would also pass to the grantee. Apart from the ownership of the bed of the river there are certain rights recognised under the law in the owners of land on the banks of the rivers. That right is stated to be by reason of the right of access or proximity which the particular land has to the water in running river. Such a right is called a riparian right which is a right relative to the bank, and, not to the bed of the stream. It is a natural right, which inheres in the owner of the abutting property. In *Chasemore v. Richards* (1859) 7 H & L 349 : 11 E.R. 140, Lord, Wensleydale stated:

The subject of right to streams of water flowing on the surface has been of late years fully discussed, and by a series of carefully considered judgments placed upon a clear and satisfactory footing. It has been now settled that the right to the enjoyment of a natural stream of water on the surface, *ex jure naturae*, belongs to the proprietor of the adjoining lands, as a natural incident to the right to the soil itself, and that he is entitled to the benefit of it, as he is to all the other natural advantages belonging to the land of which he is the owner. He has the right to have it come to him in its natural state, in flow, quantity and quality, and to go from him without obstruction; upon the same principle that he is entitled to the support of his

neighbour's soil for his own in its natural state. His right in no way depends upon prescription or the presumed grant of his neighbour.

The right to enjoy the water abutting on a man's property being thus a natural incident to his right of property, it does not depend for its existence

on any grant. Therefore even if the original inam grant did not comprise a right to take the water from the Uyyakondan river the grantee would

nevertheless have a riparian right in respect of the water by reason of the fact that the property granted to him is abutting on the river.

8. Riparian right being a natural right, can only apply to a natural stream. In the 36 CWN 359 (Privy Council) it was held that the property in land

bounded by a river has inherent in it the riparian right to take water from the river for irrigating the land. In that case, a land was bounded by a tidal

channel and the owner of the land took water from it for irrigating, his land. The Government levied a cess upon him, and the question arose

whether the levy was legal. The Privy Council held that the right of the riparian owner to use the water in a stream does not depend upon the

ownership of the soil of the stream and that he has two rights (i) to take the water for domestic use and (ii) for use connected with the land; the

irrigation of the land being one such right. In regard to the later right the use must be reasonably connected with the tenement, and the riparian

owner is bound to restore water which he takes for those purposes substantially undiminished in volume and unaltered in character. It was,

therefore, held that Government was not entitled to levy the tax as the user was not excessive in that case. This rule does not, however, apply to

artificial streams. An artificial stream is a stream which flows at its source by the operation of man, or if it flows at its source by the operation of

nature it flows in a channel made by men. Vide (Allam) Narasimhulu and Others Vs. (Gutta) Bhadrappa and Others, ""Where a stream is artificial,

natural rights cannot possibly exist, and therefore no question of riparian right can ordinarily arise. In Coulson and Forbes on the ""Law of Waters,

6th edition, at page 130, it is stated thus:

Where a stream is artificial, that is does not arise ex jure naturae from the soil but flows in a channel cut by artificial means through the lands of

adjoining proprietors the rights of such proprietors are not prima facie the same as those of proprietors of natural streams. The mutual rights of the

parties in such cases are not natural but acquired lights and are dependent for their existence entirely on the words of the grants by which they have been acquired or in the nature of the user which can be proved if the claim is by prescription. A water course, however, of course though an artificial one may have been made under such circumstances as to confer all such rights as a riparian owner would have had in the case of a natural stream.

9. In *Rameshwar Prasad Narain Singh v. Kunj Bihari Pathuk* I.L.R (1878) Cal. 633 the Privy Council held that the right to water flowing in a man's land through an artificial course constructed on a neighbour's land must rest on some grant or arrangement proved or presumed from or with the owner of the land from which the water is artificially brought or some other legal origin. In the case of a river like Uyyakondan which does not take its origin from the land of any private individual but from a natural stream there can possibly be no question of any grant by any proprietor of the land from which the stream originates. But it is possible that when the stream was constructed originally it might have been intended to give the persons through whose lands it flows all the rights which they would have had as riparian owners had the stream been a natural one.

10. In *Maung Bya v. Maung Kyi Nyo* (1925) 49 M.L.J. 282 : L.R. 52 IndAp 385 : ILR 3 Rang. 494 (P.C.), the Privy Council held that though in the case of a natural water course various riparian owners are entitled as an incident of their ownership to certain rights and in the case of an artificial water-course the right is regulated by prescription or grant or any contract with the owner of the land from which the water was artificially brought. At page 506 they observed:

There is, however, a well established principle of law directly bearing upon this case and vitally affecting it, namely, that the water-course originally artificial may have been made under such circumstances and may have been used in such a way that the owner of the land situated on its bank will have all the rights that a riparian owner has if it had been a natural stream.

11. In Volume I of the Trichinopoly District Gazetteer, at page 36, it is stated with reference to Uyyakondan river thus:

The Mamundiar which rises in the scattered hills in the Kulitalai taluk empties itself just above the town of Tiruchirappalli into the Uyyakondan

channel, one of the irrigation channels which takes off from the river Cauveri. It is also stated that it has several names being known in the different parts of its course as Ariyar, Koraiyar and the Pannayar.

The channel, though artificial, is one of great antiquity. It should have been constructed by the ancient Rajahs for the purpose of irrigation. It is well-known that similar channels or rivers were constructed in the delta district of Tanjore by the Chola Kings. The evident object in the construction of the channel should have been for irrigation. The object could have been achieved only if it was intended that these artificial channels should supply water to the owners of the abutting lands in the same way in which water was taken from the natural streams. These circumstances coupled with the other circumstances of the Government admittedly not having levied cess for the last 80 years would support the finding of the learned Judge that the user by the respondents had a lawful origin. It is therefore, clear that although Uyyakondan river as such is only an artificial channel it should be deemed to have been impressed with the qualities of a natural channel as indeed similar rivers in the neighbouring Tanjore District have, so as to invest the owners of lands abutting on the river with riparian rights. On this it follows that the Government could not levy the cess in the ease. It is not claimed on the part of the appellant that the user made by the respondents of the water was excessive.

12. Under the circumstances, the decree and judgment of the lower Appellate Court are correct. This second appeal fails and is dismissed with costs.

13. Leave refused.