(1963) 08 MAD CK 0029

In the Madras High Court

The State of Madras APPELLANT

Vs

S.P.K. Koya and Others RESPONDENT

Date of Decision : 01-08-1963

Acts Referred:

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

Citation : (1963) 76 LW 776 : (1964) 1 MLJ 232

Hon'ble Judges : G.R. Jagadisan, J

Bench : Division Bench

Judgement

G.R. Jagadisan, J.—In proceedings taken suo motu u/s 9 of Madras Act XXVI of 1948 the Miscellaneous Settlement Officer, Ramanathapuram, held that the Inam Village of Vellalankulam Vettuvankulam in Tirunelveli Taluk is not an "Inam Estate" within the definition of Section 2(7) of the Act. The State of Madras filed an appeal from the decision to the Estates Abolition Tribunal, Madurai. The Tribunal affirmed the decision of the Settlement Officer not for the reasons given by the Officer but on different grounds. Aggrieved by the decision of the Tribunals under the Act the State has preferred this appeal.

2. The only question that arises for decision is whether the village Vellalankulam Vettuvankulam is an "Inam Estate" under the Act.

3. Two conditions must be satisfied in order to bring an inam village within the definition of Section 2(7) of Madras Act XXVI of 1948 and they are, (1) the grant must have been made of a whole village or a named village and (2) the grant must have been of the melwaram alone to a person not owning the Kudivaram but not of the land itself. Section 3(2)(d) of the Madras Estates Land Act before its amendment in 1936 applied only to an inam of melwaram to a person not owing kudiwaram in the land, but did not apply to land comprising both the warams, or, in other words, to the soil of the land in the village. The definition " inam estate " u/s 2(7) of the Madras Act XXVI of 1948 confined it only to pre-1936 inams with the result that where at the inception the grant was of the land itself it would not be an inam estate under the Abolition Act. In order to

enable the State Government to abolish and take over the village under the Abolition Act it is essential that there must be a grant of the melwaram alone to a person not owning kudiwaram in respect of a whole village or named village. Failure to establish any of these conditions would be fatal to the claim of the Government to abolish the village. This much is clear and is indeed indisputable.

4. The Miscellaneous Settlement Officer was of the view that the grant was neither that of a whole village nor that of a named village. He pointed out that the village was not Vellalankulam Vettuvankulam as described and that Vellalankulam was really a hamlet and this hamlet was served by a tank for irrigation of the fields, in the opinion of the Officer there were three portions of the village lands which were combined and compendiously described Vellalankulam Vettuvankulam and that the village itself was not one single unit. On the question whether the grant was of melwaram alone or the land itself, the Officer reached the conclusion that it was possible to infer that the original grant must have consisted of both warams, and on these findings, the Officer declared that the village was not an inam estate.

5. The Tribunal however differed from the Settlement Officer and held that the grant was not in respect of both the warams, and that the State failed to discharge the onus upon it to show that the entire village of Vellalankulam Vettuvankulam was granted in inam. The finding of the Tribunal is that the grant was only of melwaram and would therefore be prima facie within the definition of" inam estate " but, as there was no proof that the grant was of a whole village or a named village the claim of the State failed.

6. Now the whole question has been argued before us. The learned Government Pleader contends that the view of the Tribunal that the grant was of a portion of the village or less than a village is erroneous and opposed to evidence in record. Mr. M.S. Venkatarama Ayyar, the learned Counsel for the Inamdar, while supporting the finding of the Tribunal that the grant was not of a whole village challenges the correctness of the finding that the grant comprised only the melwaram and not the land. It is therefore necessary to examine the evidence that has been made available in the case.

7. The original grant is not before the Court. The next best evidence is that of the extract from the Fair Inam Register, and in the absence of the grant we have to rely only upon the materials disclosed by the Inam Register and draw such inference as may be possible or permissible. We have also got the inam title deeds which were issued by the Inam Commissioners after the termination of the inam proceedings. It is also of some evidentiary value and it would be proper for us to refer to that also. The village is called Vellalankulam Vettuvankulam. It is in Tirunelveli Taluk, Tirunelveli District. It is decribed as a Kattukuthagai village. It appears from column 15 of the Inam Extract that Vellalankulam was an entire village granted to one Raja Panditha. It also appears that one Zinul Abdin Khan made the grant for the purpose of repairing the " broken " tank in the village. The grantee was to enjoy the village on (shrotriyam) tenure estimated at an

annual value of Rs. 408. The quit rent reserved was Rs. 325-2-6. The grantee was stated to be in possession of Parvana of Zinul Abdin Khan of Fasli 1150, In the ayacut account of Fasli 1212 the village is described as a Kattukuthagai village. Column 19 of the Inam Register Extract shows that the grantee Inamdar was in possession and that after him his descendant one Regunatha Rao, grandson, was registered as the owner. His son was one Ramaswami Rao. He died leaving a widow, Janaki Bai. Eight years before the inam proceedings the widow died, Even during her life time she claimed to have adopted one Ragunatha Rao, her brother''s son, in accordance with the desire of her late husband. The claim of the adopted boy for registry as inamdar was however dismissed by the Madras Government. There was an appeal to the Court of Directors and the Court issued proceedings on 24th February, 1857, and, in the opinion of the Directors the request of the widow was proper and just. So the claim of the adopted son was recognised. Column 21 of the Inam Extract shows that there were three tanks in the village, Vettuvankulam, Vellalankulam and a hamlet Muttankulam. What happened to the hamlet of Muttankulam the evidence does not disclose. But it is abundantly clear that from the very earliest times the village was called Vellalankulam Vettuvan-kulam and was treated as a unit and that there was grant by one Zinul Abdin Khan in favour of Raja Panditha, the purpose of the grant being to have the tanks in village forming the source of irrigation kept in good repair and conditions. We must point out that there is absolutely nothing in the Inam Fair Register to suggest that the grantee obtained only an assignment of the melwaram and not the land itself.

8. There is however one circumstance to which reference has to be made in considering the question whether the grant by Zinul Abdin Khan was of a whole village or a named village. It is now found that there is a minor inam in the village of an extent of about Ac. 24-16 (Dry Ac. 20-93 plus Wet Ac. 3-23). The Inam Fair Register relating to the village besides deducting the poramboke also deducts this extent of inam for the purpose of calculating the re-assessment. The question immediately arises whether the minor inam preceded the grant of the major inam with which we are now concerned or whether the two grants, major and minor, were simultaneous, or whether the grantor reserved the portion comprised in the minor inam and granted only the balance to Raja Panditha. If it were to be held that there was a simultaneous grant of the minor and the major inam, or that there was a reservation on the part of the grantor of the portion comprising the minor inam, then obviously the grant could not have been that of a whole village or a named village unless it is possible that the minor inam must have preceded the major inam, the State must fail in its contention and the Inamdar must succeed. The problem that now confronts us is therfore which one of there possibilities mentioned above could be predicated with any degree of certainty.

9. We may now refer to the Inam Extract relating to the minor inam. The minor inams appear to have been granted in favour of a certain Selli Amman Temple, Vinayagar temple Sastha, Agastiar temple and " Nandavanam ". The name of the

grantor of these minor inams does not appear. We can only say that the grantees might have been either the temples or the persons in charge of the Nandavanam. It is therefore unlikely that the grantor of the major inam would have made these grants. If these portions were reserved by him at the time of making the grant in favour of Raja Panditha for keeping the tanks in good condition there would not have been any difficulty for the Inam Commissioners to say that the grantor of these minor inams was also the same grantor. If the grantor of the minor inams has not made the grant simultaneously with the major grant, or subsequently, the only other inference that is possible is that the minor inams must have preceded the grant of the major inam and what was granted for the purpose of tank repairs was only the balance left after deducting the minor inams and that was certainly a named village. The inam title deeds also show that the entire extent of the land in the village less the minor inam was the subject-matter of the grant in favour of Raja Panditha. We are therefore of the opinion that one of the conditions necessary to bring the village within the definition of the " Inam Estate " is present.

10. Mr. M.S. Venkatarama Ayyar submits that the decision of the Tribunal can be supported on the ground decided adversely to the inamdar. His contention is that the original grant was not that of melwaram alone but was of the land itself. This argument is based solely on the description of the village as being of Kattukuthagai tenure. As stated already, the records show that the village had all along been known as Kattukuthagai village. Reliance is also placed upon the terms of the inam title deed which, in so far as it is material, runs in these terms:

I acknowledge your title to a Kairathi Inam situated in Kattukuthagai village of Vellalankulam Vettuvankulam, Taluk of Tirunelveli, District of Tirunelveli, claimed to to be acres 644-64 of dry land and acres 166-15(One hundred and sixty-six of wet land besides poromboke).

This inam is subject to a jodi or quit rent of Rs. 335-2-6 per annum, and is hereditary....

Rs. 446-07 Rupees four hundred and forty six (torn) of the jodi already charged on the land as above stated your inam tenure will be converted into a permanent free-hold in which case, the land will be your own absolute property to hold and dispose of as you think proper subject only to the payment of the above-mentioned quit rent.

It appears from the endorsement of the inam title deed that the Inamdar had effected the conversion which was permitted to him. The endorsement reads as follows:

Whereas you have agreed to convert your tenure into an absolute free-hold on the terms offered you in Clause 4 of this deed, and have paid into the Government Treasury of...the sum of Rs. ...in permanent redemption of the entire quit rent chargeable on the land, your inam is hereby confirmed to you in perpetuity as an absolute freehold, that is to say, free from all the tax whatever to the Government.

The expression "freehold" has got some significance in the context and it cannot be said that mere collection of melwaram was conferred as freehold property on the grantee. The Inam title deed expressly stated that the land will be the absolute property of the title-holder. These are words which are clear and unmistakable and should not be slurred over.

11. Then the question is whether the grant was of the land or only of the melwaram due on the land. The expression "Kattukuthagai Village", particularly in Tirunelveli District, has been interpreted to mean and to refer only to a tenure in land. The questions have been considered by the Judicial Committee in Secretary of the State for India v. Srimath Vidhya Sri Varada Thirta Swamigal (1942) 2 M.L.J. 367 : ILR (1942) Mad. 893 : L.R. 69 IndAp 22 (P.C.) and the view taken is that the term " Kattukuthagai " refers only to a conferment of a freehold in the land though no doubt to be held by the grantee on favourable terms. The definition of " Kattukuthagai " in Wilson''s Glosary as " land held in form at a permanently fixed money rent which is usually light " is accepted as the true and correct definition. The Judicial Committee referred to the observations of Wallace, J., in Medai Delavoi Thirumalayappa Vs. Karuppayi Ammal and Others, and approved the dictum of that learned Judge who observed in that decision as follows:

"Kattukuthagai" was in essence a lease or grant of land at a favourable rent....There was nothing in the term itself from which one is entitled to infer that what was handed over was only the melwaram.

Their Lordships of the Judicial Committtee observed:

That is the exact point now before their Lordships, whose examination of the matter leads them to the same conclusion.

We do not feel called upon to refer to other decisions on the subject as we are of opinion that a Kattukuthagai village is an inam village, where the inam is that of the land and not of mere melwaram alone. We are therefore, of opinion that though the village was granted as named village by the grantor and is an estate within the meaning of the Madras Estates Land Act, it is not an "inam estate" u/s 2(7) of the Act as the grant was not that of melwaram alone to a person not owning the kudiwaram. It follows that the decision -of the Tribunal should be confirmed though on different grounds.

12. In the result, the appeal fails and is dismissed with costs. Counsel''s fee Rs. 100.

