

(1958) 08 MAD CK 0008
In the Madras High Court

The State of Madras

APPELLANT

Vs

The Estates Abolition Tribunal and Another

RESPONDENT

Date of Decision : 20-08-1958

Acts Referred:

Citation : (1959) 72 LW 21 : (1959) 72 LW 1 : (1958) 2 MLJ 585

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—This is a petition by the State of Madras for the issue of a writ of certiorari to quash the Order of the Estates

Abolition Tribunal, Madurai, in Revenue Appeal No. 73 of 1955 on its file.

2. The village of Avarendal in Paramakudi taluk in Ramanathapuram district was an Inam Estate. On 3rd December, 1953, the State of Madras

notified and took it over under the provisions of Madras Act XXVI of 1948. One Peria Pappammal, who had been the landholder of the village,

applied to the Additional Assistant Settlement Officer, Aruppukottai, for the grant of a ryotwari patta in respect of various items of land. We are

now concerned only with twelve of those items. The Special Tahsildar objected before the Additional Assistant Settlement Officer to the grant of

the ryotwari patta claimed by Peria Pappammal on the ground that those twelve items of lands are liable to submersion under the irrigation tank of

the village. The Additional Assistant Settlement Officer rejected the claim of Peria Pappammal. On appeal, the Estates Abolition Tribunal,

Madurai, reversed his decision and directed the grant of a patta to Peria Pappammal. The State of Madras now seeks to have that order quashed.

3. Shunmugha Sundara Mudaliar, the husband of Peria Pappammal, gave

evidence on her side. He filed a number of documents, apparently intended to establish the title of his wife to these twelve items among others. He also deposed that these twelve items are " kulam punjais " and that they are higher in level than the " vettu thavu " which we take to mean the deeper portions of the tank. He also deposed that there are continuous plots of ryoti lands to the north and south of these twelve items and that the "" vettu thavu "" is to the east and some 40 or 50 feet away.

4. The Karnam of the village was examined on behalf of Government. He deposed that all these twelve items are kulam punjais and that water may stagnate on them to a depth of about 2 feet when there is full supply in the tank. The area of the tank-bed had not been separately noted in the adangal. Water might stagnate in other ryoti lands also. The petitioner pays kist for these lands. He specifically mentioned that all the lands mentioned in the application are registered in the name of the petitioner. He also added that the petitioner does not obstruct the free flow of water to the tank, that there are no high ridges in the fields and that there are ryoti lands nearby.

5. The Additional Assistant Settlement Officer rejected the claim of Peria Pappammal in respect of these twelve items, and, in doing so, observed as follows:

The ryots object to item No. 9 (wet), item No. 14 (dry) and item No. 37 (dry). The petitioner gives up her claim in respect of item 9 (wet) and 14 (dry). As regards item No. 37, the petitioner agrees to give up the excess extent claimed by her. The ryots do not claim the other lands. There are ryoti as well as pannai lands in the village. The other lands claimed by him are enjoyed by her by personally cultivating them and by leasing a few lands. She has filed a number of sale deeds, other deeds, lease deeds, obbadi accounts and old adangals to show that the lands are her private lands and that they are registered as such in the village accounts. Items 1 to 12 (dry) are foreshore land liable to submersion. As water may stagnate there for about months it is not desirable to allow the lands to be cultivated in the interest of the tank. These lands are therefore required for the tank. The claim in respect of these lands cannot be allowed.

6. It will be noticed that the order does not show that the other ryots in the village objected to the grant of a ryotwari patta to Peria Pappammal in

respect of the twelve items we are now concerned with. It has also to be remarked that the Additional Assistant Settlement Officer has made no effort to ascertain whether the claim of Peria Pappammal in respect of all or any of these twelve items was actually supported by the documents filed on her behalf. The Additional Assistant Settlement Officer does not say that he rejects the evidence of the Karnam that Peria Pappammal has been paying kist for all the lands. Nor does he say that he disbelieves the evidence of the Karnam that all the lands mentioned by Peria Pappammal in her application are registered in her name. He rejected the claim of Peria Pappammal only on the ground that the lands are foreshore lands liable to submersion, and that as water may stagnate on them it is not "" desirable "" to allow the lands to be cultivated and that the lands are required for the tank. As an officer of the Revenue Department, he should have been aware of the significance of what constitute the foreshore lands as distinct from the tank-bed. He did not decide whether all or any of these twelve items, and the plots of lands contiguous with them, "which were apparently held by ryots in the estate on patta, ever constituted part of the tank-bed. When we paraphrase the words of the Additional Assistant Settlement Officer we find that he is merely trying to say in a naive and almost disarming way that the Government would like to retain the lands for use as a "" tank and that they do not want to pay compensation for them. This is not a proper mode of dealing with the claims and rights of individuals to property, and we cannot countenance it.

7. In dealing with the appeal preferred by Peria Pappammal the Chairman of the Tribunal observed:

The Additional Assistant Settlement Officer, Aruppukottai, has not only found appellant's title to these lands but also that they are his (sic) pannai lands. Obviously none of these lands form part of the tank-bed It is clear from the evidence that the extent of the tank has not been noted in the adangal and that none of these lands is even within the waterspread of the tank. There is no evidence for what purpose anyone of these lands is required for the tank. Even if it were so, admittedly the title being in the appellants and as none of the lands is proved to be a part of the tank-bed, the appellant cannot be disentitled to the grant of ryotwari patta for them.

8. The third member of the Tribunal wrote a separate but concurring order. In

that he stated:

The appellant's title to these lands have (sic) been found as would be seen from the evidence and admittedly these lands have also been found to

be the private properties of the appellant-landholder;

The Additional Assistant Settlement Officer, has clearly found the title as well as the nature (sic) of the lands in favour of the appellant....These

lands are admittedly the private lands of the appellant which have all along been enjoyed and treated as such.

9. Now, the statement that the Additional Assistant Settlement Officer has found title in the appellant is not correct. He has recorded no finding to

that effect at all. In fact, as we explained earlier, he has not even made any effort to correlate any of these twelve items to the various documents

produced before him. The further statement of the Tribunal that the title to the lands is admittedly in Peria Pappammal is also erroneous. It must be

appreciated that the statements made by the Karnam in the box are not tantamount to admissions made by or on behalf of Government.

10. There was no material on the basis of which the Chairman could have concluded that none of these lands formed part of the tank-bed. The

Karnam, it should be remembered, specifically stated that these twelve items of the petitioner's lands were liable to submersion when the tank

received its full supply of water. The Tribunal did not consider whether that was one of the factors to be taken into account in deciding whether

these lands were part of the tank-bed, or whether, though these lands lay in the foreshore of the tank, they did not form part of the bed of the tank.

No attempt was made at any stage to determine even what the full tank level of the tank was. A map was filed before us, no doubt after the

Tribunal disposed of the matter, which showed that the level of the petitioner's lands was lower than that of the ground escape of the surplus water

of the tank and also that of a cut made in the bund for further releasing the surplus water. The map has been used by us only to understand the

scope of the arguments addressed to us. We have also to remark that like the Additional Assistant Settlement Officer the Tribunal did not make

any attempt to ascertain to what extent the documents produced on behalf of the petitioner Peria Pappammal related to the twelve items of lands in

question, and to what extent they supported her claim.

11. The order of the Tribunal is liable to be set aside on the grounds that it contains manifest errors apparent on the face of the record, and, that the appeal was disposed of without reference to all the relevant material and without a proper investigation. The rule nisi is made absolute. The order complained of is quashed. The Tribunal must dispose of the appeal afresh. In so disposing it of the Tribunal will afford an opportunity to both sides to adduce further evidence, if the parties seek such an opportunity.

12. To enable the Tribunal to deal with such questions properly we shall explain some of the considerations which must be kept in view when disposing of claims of this nature. These considerations of the Assistant Settlement Officers also will have to take into account in similar cases.

These considerations are, however, not to be regarded as exhaustive.

13. In respect of lands that are liable to submersion when the tank is at full tank level, the initial presumption, which is however rebuttable, is that those lands form part of the tank-bed. But, in a large number of cases this may not be so. Numerous decisions of the Court proceed on the basis that water stored in an irrigation tank does spread over and stagnate on other lands which indubitably are patta lands and do not therefore form part of the tank-bed. The decisions also lay down that in such cases the ryots whose lands are submerged can make no grievance of it or claim any relief from payment of the assessed land revenue. That is on the ground that such has been the customary mode of irrigation in this country from time out of mind. This position was recognised in the instructions contained in the Standing Orders of the Board of Revenue. In Board's Standing Order 16, paragraph at page 85 of Volume 1 of the Board's Standing Orders, these instructions appear:

All lands liable to submersion when a tank is full should remain registered as "tank poramboke" as long as the tank is maintained. The actual extent of the waterspread of each tank at full tank level should be shown in colour wash in the karnams' and tahsildars' copies of the village maps and against every field so shown, whether it is occupied or not, the entry "waterspread of tank" should be made in the settlement register and adangal account. Against every unoccupied field or sub-division so registered, the further entry "tank poramboke" should be made if the field is not already shown as such ; and in the case of occupied fields the actual extent of the

waterspread of each tank at full tank level should be separately subdivided and the entry "waterspread" should be made in the register against such sub-divisions in view to their being transferred to tank poramboke as soon as, they revert to Government at a revenue sale or by relinquishment or otherwise. Whenever in consequence of improvements or repairs to a tank its waterspread area increases, the records mentioned above should be revised accordingly. It is the duty of the Karnam to see that the maps and registers mentioned above are kept up-to-date and that no waterspread land transferred to tank poramboke " is assigned.

14. Instructions similar to these have also been incorporated in the Re-settlement Manual.

15. Thus there was a distinct recognition of the fact that lands liable to submersion could also be privately owned as patta lands in ryotwari areas.

The position in this respect in zamindari villages can in no way be really different.

16. The initial presumption, that lands liable to submersion at full tank level are part of the tank-bed, will cease to apply where those lands are

registered as wet under another source of irrigation. Where a chain of tanks exists, it very often happens that lands at the tail end of the ayacut of

one tank and registered as wet under that tank are liable to submersion by the water of the tank immediately below. In such cases the presumption

we referred to above cannot really be invoked at all.

17. The initial presumption that lands liable to submersion are tank-bed lands would lose much of its strength whenever it appears that the depth of

the water likely to stand on the land would be very little, or that the period of submersion would be very short. This would be particularly so where

no memoirs have been prepared for an irrigation tank, and evidence has to be gathered to find out what the full tank level is. Before deciding what

depth of water is likely to stand on any particular plot of land it is desirable to insist on accurate figures. It should not be very difficult to obtain such

figures if levels are taken. General statements of villagers or of the Karnam or even reports made by higher officers based on a single visit to the

village made for the purpose will not have the same usefulness as accurate figures obtained after taking levels. In such cases it would be very

desirable to have a plan prepared showing the levels and the other necessary

details. The period during which water is likely to stand on the land must no doubt to a large extent be the subject-matter of oral testimony, but a measure of check on the truthfulness or accuracy of those statements can be effected by taking into account the area of the tank, the area of the ayacut under it, the source or sources from which the tank derives its supplies, the contour of the village and other facts an officer of the Land Revenue Department, the Minor Irrigation Department or the Public Works Department is expected to be familiar with. As we said, a map showing all these details should be of considerable help.

18. Where a claim is made that a piece of land, which is liable to submersion, is not part of the tank-bed, it would be useful to enquire what the position is of the lands adjoining the particular plot in question. Here it is useful to bear in mind that the bed of a tank would ordinarily form one continuous stretch, and if the result of allowing the claim would be to produce a series of islands of cultivated land and ponds in the tank-bed, the claim should be treated with a measure of skepticism.

19. Though it has been recognised that zamindar was the owner of the bed of a tank he had no right to assign it or to give it away to whomsoever he chose or to convert what was really tank-bed into private or pannai lands. A tank, however, may be abandoned because other and superior facilities for irrigation have come into being, as for example, by the construction of a dam across a river and the cutting of channels that "would irrigate the fields. Abandonment, of course, must be very clearly proved. Mere disuse owing to the neglect of the zamindar to repair the tank will certainly not be tantamount to abandonment. Where a tank has been abandoned, its bed might have been converted into ryoti land and assigned as such or even into private land.

20. The initial presumption we have referred to may not apply when land is shown to be included in the patta of a ryot, even though the land is registered only as dry. This would be especially so, when the land lies in a different village, as might well be the case where the village boundary runs between the tank and the lands concerned.

21. Where land liable to submersion is registered in the zamindar's accounts as patta (ryoti land) and there is no reason to suppose that the registration, has been brought about improperly and with a view to avert the

consequences of impending legislation, it would be right: to recognise the registry, which would be of considerable evidentiary value in deciding whether the land is ryoti or patta land. Again, where the land has been dealt with, that is to say, bought or sold or mortgaged as patta land for a number of years it would be right to treat it as ryoti or patta land. Even where there has been no sale, exchange or mortgage, it would still be right to treat the land as patta land, where the land has been shown to be continuously cultivated for a long period of years. Here one word of caution is necessary. It is customary in several parts of the State to allow ryots to cultivate beds of tanks during periods when the water has receded in the tank and such cultivation will not interfere with the effective use of the tank as a source of irrigation. Such fugitive cultivation, however, should not be treated as evidence that the land is patta land.

22. Similar considerations can well prevail where a zamindar claims a given piece of land as his private land. The distinction between ryoti land and tank-bed land will be more or less similar to the distinction between pannai land and tank-bed land.

23. Where a claim is made by the zamindar that a given piece of land is his private land, he should be required to prove it in the manner prescribed by the statute as explained by a Full Bench of this Court in *Periannan v. A.S. Amman Kovil* (1952) 1 M.L.J. 71 . It must be remembered that even if the nature of the land is not known, continuous cultivation for the required period of twelve years before the commencement of the Madras Estates Land Act of 1908 could well establish that the land is private or pannai land.

24. The use of expressions like ""kulam korvai"" or "" kulam punjai "" may not be conclusive even on the question whether the land is liable to submersion or not, since that expression is understood in different senses in different places. Thus for instance, we find it stated in *Arunachalam Chettiar v. Mangalam* (1917) 31 M.L.J. 168 : ILR Mad. 640 that Kulam korvai is land in the bed of tanks just ""within the limits of the full water-spread which is cultivated with paddy, and it is not disputed that such lands are classed as punja lands.

25. We find, however, on page 285 of the *Manual of the Ramnad Samastanam* (1891) this statement:

Assessment on kulam korvai or lands, in the bed of tanks, just without the limits of the water-spread, within which cultivation is prohibited, cultivated with paddy.

26. The same ideec is repeated on page 292:

The kulam korvai or land cultivated with paddy in the bed of tanks, just without the limits of the water-spread ; the cultivation within the limits of water-spread being prohibited.

27. Kulam korvai, however, has generally been classified as punja. But the continuous use of the word ""kulam punjai"" in relation to land would suggest that it has been cultivated regularly and that it has been assessed at dry rates.

28. As we stated, we have only suggested some of the considerations that the statutory authorities, the Settlement Officers and the Tribunal, will have to take into account in deciding whether a given piece of land is tank-bed land or not.

29. The petition is allowed. There will be no order as to costs.