
(1974) 08 MAD CK 0011
In the Madras High Court

The State of Tamil Nadu and Another	APPELLANT
Vs	
The Sivaganga Devasthanam	RESPONDENT

Date of Decision : 06-08-1974

Acts Referred:

Citation : (1975) 1 MLJ 278

Hon'ble Judges : K. Veeraswami, C.J

Bench : Single Bench

Judgement

K. Veeraswami, J.—Though in form the writ petitions filed by the respondent were dismissed, everything stated in the course of the

judgment was against the Government and that is how they have filed these appeals. The Sivaganga Zamin was notified on 7th September, 1949.

The notification included Kattanur group of estates and it was described as an undertenure. But in this group, Mudikondan was not included.... On

23rd November, 1957, a fresh notification was made treating the estate as Zamindari, including Mudikondan.... On 12th December, 1957,

Mudikondan was taken over u/s 2 (3) of Madras Act XXVI of 1948. A petition to quash the notification failed; but on appeal it was held that

Mudikondan was an undertenure and, therefore, the appeal should be allowed to remove the error in description of the character of Mudikondan.

That was in July, 1963 In view of this judgment, Government, by a fresh notification dated 8th October, 1964, modified the earlier notification of

23rd November, 1957, by stating that Mudikondan was an undertenure and would be treated as having been notified as such and taken over. The

petitions out of which the appeals arise were to quash the modification made by Government and for a direction to hand back Mudikondan, an

undertenure estate, along with all rents and profits derived and derivable in respect of it.

2. Palaniswamy, J., was of the view that the fresh notification dated 8th October, 1964, giving effect to it from 23rd November, 1957, was bad,

and that the only course for the Government to adopt was to issue a fresh notification u/s 1(4) describing the village correctly as an undertenure.

He also thought that the respondent was consequently entitled to claim from the Government the entire collections made by them less 10 percent,

for collections already made as provided in Section 3 (4) of the Rent Reduction Act, in addition to compensation u/s 5 (1) of that Act for the loss

of income for all faslis upto the fasli in which the village would be validly taken over. But then he dismissed the writ petitions on the view that the

respondent as a petitioner before the learned Judge was not without any remedy. He, therefore, declined to give a direction to restore the village to

the respondent.

3. With respect we are unable to concur with the view of the learned Judge that there should be a fresh notification in order that the taking over by

the Government of Mudikondan as on 23rd November, 1957 would be regarded as valid. It seems to us that having regard to the definition of an

estate in Section 2 (3) which includes a zamindari or an undertenure or an inam, once an estate, be it any one of three categories, is notified u/s 1

(4) the validity of such notification cannot be assailed on the ground that there was an erroneous description of one of the villages comprehended

by the notification as to its nature. The moment an estate is notified, Section 3 would come into operation, that is to say, the estate, whatever be its

description--a zamindari, or an undertenure or an inam estate--would vest in the Government free of all encumbrances and the Government would

be entitled to take possession there of immediately. That happened in this case on 23rd November, 1957. It would make no difference to the

validity of the notification, vesting and taking; possession, though Mudikondan was wrongly described in the notification as a zamindari estate. The

reason is whatever be the nature of the estate--a zamindari or an undertenure or an inam estate--every one of them will be regarded as an estate

and, therefore, when the notification is made treating it as an estate, the result follows u/s 3. The learned Judge was not, therefore, right in his view

that because there was a wrong description which was removed by this Court in the writ appeal and, therefore, the notification of Mudikondan. as

an estate itself would be invalid, there should be a fresh notification thereof u/s 1 (4).

4. Nor can we accept the contention of Counsel for respondent that, because Writ Appeal No. 9 of 1960 was allowed, it had the effect of

quashing the entire notification. A reading of the judgment in the writ appeal would show that this Court was only concerned with the error in the

description of Mudikondan as a zamindari estate. It has not the effect of quashing the notification itself.

5. The remaining question as to the-retrospective operation of the modification is of no significance, because on the notification u/s 1 (4) the estate

vested in the Government. Since we have held that the notification was good, the : Government could validly continue in possession from 23rd

November, 1957 and therefore, the retrospective operation given to the removal of the error could only be consistent with the effect of the

notification upheld by us. It was within the power of the Government to say that Mudikondan should be regarded as a notified undertenure with

effect from 23rd November, 1957. We may also further indicate that the scheme of the Act is this. Once a notification is made as we already

mentioned, the related estate vests in the Government and they take possession. Provision is made for determination whether what is notified and

taken over is an estate. If it was an estate, then the notification would be sustained. Thereafter, two steps are provided by the Act. One is for

settlement of the estate taken over and the other is for settlement of compensation payable to the quondam landholder. Whether what was taken

over is a zamindari or an undertenure or an inam estate, it would have a bearing only upon the particular provision in the Act which would govern

computation of compensation, namely, Section 27 or Section 31 or Section 36, and nothing more.

6. The appeals, are, therefore, allowed with costs (one set) and the judgment under appeal is set aside. Counsels fee Rs. 100. We make it clear

that the effect is that the writ petitions will stand dismissed.