
(1954) 09 MAD CK 0001
In the Madras High Court

The Thiruvaduthurai Mutt

APPELLANT

Vs

The Estates Abolition Tribunal and Others

RESPONDENT

Date of Decision : 02-09-1954

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1955) 68 LW 496 : (1956) 1 MLJ 382

Hon'ble Judges : Rajagopalan, J

Bench : Division Bench

Judgement

Rajagopalan, J.—This is a petition under Article 226 of the Constitution to issue a writ of certiorari to quash the orders of the Estates

Abolition Tribunal constituted under Madras Act XXVI of 1948, reversing the orders of the Settlement Officer in proceedings under that Act. The

Settlement Officer held that the area of the lands held by the petitioner in Esanamatam village in Tirunelveli District did not constitute an estate. On

appeal to the Tribunal, a majority consisting of two of the members held that it was an estate. The other member held that it was not an estate.

2. The opening paragraph of the Judgment of the majority of the Estates Abolition Tribunal ran:

Inam Esanamatam consists of (I) 5 isolated hamlets in rain-fed areas with wet and dry lands; (a) isolated wet blocks in and out of Tirunelveli

Municipal Limits in four villages in the Tambraparni area. There is one karnam for all the bits maintaining one set of accounts.

One should have thought that such a finding by itself should have sufficed to negative the contention put forward by the ryots before the Tribunal,

that all these together constituted an estate as defined by Section 3(2)(d) of the Madras Estates Land Act, which has been incorporated into the

definition by Act XXVI of 1948.

3. What had to be established before it could be held that the inam lands in the possession of the petitioner constituted an estate as defined by

Section 3(2)(d) of Madras Act I of 1908 was that the grant in the first instance had been of a whole village. The original grant itself was not

forthcoming. The terms of the original grant or grants had to be gathered from the extracts of the Inam Fair Register which were produced in

evidence and marked as Exhibits A-1, A-2 and A-3.

4. From Exhibits A-1, A-2 and A-3 it should be clear that at least during the proceedings of the Inam Settlement in 1860 and afterwards the lands

held by the petitioner's predecessors in title constituted only parts of the village of Esanamatam. Under title deed No. 271 (Exhibit A-4) what was

confirmed as an inam grant was 1761.36 acres of dry lands and 129.38 acres of wet land, besides poromboke. This inam grant was subject to

payment of an annual quit rent of Rs. 21-3-5. Exhibit A-1 is the extract from the Inam Fair Register relating to this grant, and that showed that out

of the total extent of 1761.36 acres 1651.36 acres were cultivable lands and the rest poromboke. This extent of 1761.36 acres lay in five hamlets

named in Exhibit A-1 itself. As I have already pointed out, the Tribunal itself found that these five were isolated hamlets in Esanamatam village.

5. Exhibit A-2 showed that 7.59 acres of single crop wet land and 68.57 acres of double crop wet land, making up a total of 76.16 acres,

constituted an inam known as Pattam Esanamatam, which grant was confirmed by the Inam Commissioner. The grant was subject to a payment of

what was styled as pattam jodi of Rs. 839-9-9 per year.

6. Exhibit A-3 showed that what was granted in inam was an extent of 1.66 cents which was a tope, and that tope was used as a "samadhi", for the

burial of the priests of the Matam. It was that grant that was confirmed by the Inam Commissioner.

7. Whatever was held on inam tenure at the commencement of the proceedings by the Inam Commissioner was confirmed by the Inam

Commissioner. With reference to the holdings at the commencement of the Inam proceedings, the ordinary presumption of lawful origin should

prevail. It should therefore be held that what was held before the Inam Settlement was what was originally granted.

8. From a perusal of the entries in Exhibit A-3, under which the original grant of 1.66 cents of land, for the samadhi, was confirmed by the Inam

Commissioner, it should be fairly obvious that the grant could never have been of a whole village within the meaning of "estate" in Section 3(2)(d)

of Act I of 1908.

9. Under Exhibit A-I lands in five isolated hamlets were recognised as being held on inam tenure, subject to payment of a quit rent of Rs. 21-3-5;

and it was this grant that was confirmed by the Inam Commissioner. It was the entire extent including poromboke in each of these five named

hamlets that was held on inam tenure. But still these five units were styled only as hamlets, not constituting either individually or together a whole

village at any time. If what was originally granted was only five isolated hamlets in a village, obviously the grant could not have been of a whole

village. There was nothing in the evidence on record to show that these five hamlets constituted a whole village at the time of the original grant or

even that each hamlet constituted a whole village at the time of the original grant.

10. With reference to Exhibit A-2 it is clear that what was granted in inam, that is what was held on inam tenure, was only cultivable land. That

land was granted on pattam tenure, that is at a favourable rent. The rent was originally payable in grain up to the inam settlement. It was commuted

into money, and the amount fixed was Rs. 839-9-9. As I said, only cultivable land was held on pattam tenure, and no poromboke was included.

The rent itself was fixed not for the whole area as such, but in terms of each wet seed kotta, that is, at three kottas of grain for a wet seed kotta. It

was the commuted value of the grain that was fixed as the rent payable, viz., Rs. 839-9-9, in column 13 of Exhibit A-2. No poromboke, as I have

already indicated, was included in the area granted or held on inam tenure. The only possible inference seems to be that what was granted and

what was held was a definite extent of cultivable land and that grant was on a favourable rent. In the judgment of the majority of the Tribunal, it

was pointed out that even this extent lay in scattered blocks. No doubt in Exhibit A-2 the heading referred to this inam as a pattam village. The

recitals in column 21 were:

This is a pattam village. The assessment of the village was given in grain and

now commuted into money.

Obviously, the reference is to the tenure, the Pattam tenure and what was granted and held as inam was referred to as pattam village, to distinguish

that block from the lands referred to in Exhibit A-I, that is on quit rent or ""Kattukuthagai"". Even the exclusion of the poromboke and the grant of

only the cultivable land should be sufficient to show that what was granted and what was held as inam could not have been a whole village. The

exclusion of the poromboke, in my opinion, seems to be totally inconsistent with any inference that what was granted was a whole village.

11. From Exhibits A-I, A-2 and A-3, it should be clear that the purpose of each inam grant was different. Column 8 of Exhibit A-I showed that

grant was for the support of the Mutt at Tiruvaduthurai. Column 8 of Exhibit A-2 also showed that grant was for the support of that Mutt; but it

has to be read with column 14 of Exhibit A-2, which indicated that the grant was for the Maheswara Pooja in the Thiruvaduthurai matam. Column

8 of Exhibit A-3 ran ""Tope inam for the object of burying the priests of the Matam at Esanamatam"" and that was reiterated in column 16 ""for the

special object of burying the priests of the Matam.

12. The original grants themselves were not produced during the Inam Settlement. No records earlier than fasli 1212 were produced either. In this

state it should be fairly obvious that there was nothing in the evidence on record to show that the three grants for three different purposes were

simultaneous. No doubt the grantee in each case was the same. Learned Counsel for the respondents-ryots contended that it was possible that the

entire area was granted originally as a village, and that subsequently other grants were made with these three different purposes referred to in

Exhibits A-I, A-2 and A-3. There was really no basis on the evidence on record to warrant such an argument and if the presumption of lawful

origin, which I have referred to, is to prevail, it should be clear that there were three inams for three different purposes, held on three different

tenures. If each was a separate grant, obviously the three grants together could not constitute the grant of a whole village within the meaning of

Section 3(2)(d). Nor is there anything to indicate that each grant by itself constituted a whole village as defined by Section 3(2)(d). Neither

individually nor collectively could any of these grants be termed a grant of the

whole village within the meaning of Section 3(2)(d). It therefore follows that the decision of the Estates Abolition Tribunal, that these three grants constituted a village, and therefore constituted an estate as defined by Section 3(2)(d) is wrong and has to be set aside.

13. Learned Counsel for the ryots-respondents referred to the decision in Venkatanarasayya and Ors. v. The Slate of Madras (1952) 2 M.L.J.

194, and urged that this Court should not interfere with the finding of the Estate Abolition Tribunal in exercise of its jurisdiction under Article 226 of

the Constitution, because the petitioner had other remedies open to him and he could file a suit to establish his claim. I am, however, unable to look

upon the decision referred to as authority for the position which the learned Counsel took up, that under no circumstances, where the remedy of a

suit is available, could this Court invoke or exercise its jurisdiction under Article 226 of the Constitution. In fact, in practice during the last few

years, this Court has examined the cases that came up before it in exercise of the jurisdiction conferred under Article 226 of the Constitution and,

with reference to the evidence made available to the Tribunal and decided that a given village was an estate or not as defined by Section 3(2)(d).

In this case, the majority of the Estate Abolition Tribunal decided that the three grants together constituted an estate on no evidence at all, at least

on no real evidence. Such an error apparent on the face of the record can be rectified in exercise of the powers vested in this Court by Article 226

of the Constitution.

14. Though the Government was a party to the proceedings, the learned Government Pleader represented that his instructions were to let the

question at issue be argued by the petitioner on the one hand and the respondents-ryots on the other.

15. The petition is allowed. The order of the Estates Abolition Tribunal is quashed and the rule nisi is made absolute. The petitioner will be entitled

to his costs from respondents 3 to 8. Counsel's fee Rs. 100.