(1982) 07 MAD CK 0014

In the Madras High Court

Case No : Specisl Tribunal Appeal No. 308 of 1977

The Tirupparankundram Sri Subramaniaswami Koil — APPELLANT

Vs

Sheik Mohaideen and Others — RESPONDENT

Date of Decision : 29-07-1982

Acts Referred:

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 3, 8, 8(1), 8(2), 9(1)

Citation : (1983) ILR (Mad) 1

Hon'ble Judges : Nainar Sundaram, J;Gokulakrishnan, J

Bench : Division Bench

Advocate : V. Srinivasan, for the Appellant; T.R. Mani, for the Respondent

Final Decision : Allowed

Judgement

Gokulakrishnan, J.—Sri Subramaniaswami Devasthanam, Thirupparankundram, is the Appellant in this case. The dispute is with respect to

the grant of a ryotwari patta in respect of a land measuring 1.84 acres in Thirupparankundram village situate in S. No. 217/4. The Appellant

contends that the grant is in favour of the temple, this being a Devadayam grant and as such patta has to be granted in favour of the temple.

Respondent 1 to 7 claim right under exhibit A-9 and exhibit A-10 being the sale deeds of the year 1962 executed by one Somasundaram Pillai.

This Somasundaram Pillai gets the right for 87 1/2 cents under exhibit A-1. The other portion of the property, Somasundaram Pillai gets by way of

succession, he being the son of one Thirunavukkarasu. Hence, Respondent 1 to 7 want patta u/s 8(2) of the Tamil Nadu Minor Inam. (Abolition

and Conversion into Ryotwari) Act, 1963 (Tamil Nadu Act XXX of 1963) (hereinafter referred to as the Act). The settlement Tahsildar granted patta for this extent of 1 acre 84cents in S.F. No. 217/4 u/s 8(1) of the Act. On appeal by the Appellant herein, the Inams Abolition Tribunal,

Madurai, confirmed the order of the Settlement Tahsildar by rejecting the claim of the Appellant for grant of patta u/s 8(2)(ii) of the Act. It is as

against these orders, the present appeal has been filed.

2. Mr. V. Srinivasan, learned Counsel appearing for the Appellant, submitted that the grant is in favour of the temple and not a personal inam grant

burdened with service, and as sue patta has to be granted in favour of the temple. The second contention raised by Mr. V. Srinivasan is that the

sales under exhibits A-9 and A-10 in favour of the Respondent being subsequent to 1st April, 1960, the Respondent cannot invoke the provision

u/s 8(2)(I) for grant of patta. His next contention is that even assuming that this is a personal inam grant burdened with service, the property is

inalienable and as such patta cannot be granted in favour of the Respondent, but has to be granted in favour of the temple at least u/s 8(2)(ii) of the

Act. Mr. V. Srinivasan also contended that the Respondent, being the assignees from Somasundaram Pillai, should prove their possession for the

period mentioned in Section 8(2)(i)(a) for the period mentioned in Section 8(2)(i)(b) to get patta under these provisions of the Act.

3. Mr. T.R. Mani, learned Counsel appearing for the Respondent, countered all these arguments stating that the Respondents are entitled to get

patta in respect of 87 1/2 cents u/s 8(2)(i)(b), and for the balance the matter has to be remanded to the file of the Settlement Tahsildar to ascertain

the personal cultivation of the Respondent in order to get ryotwari patta u/s 9(1)(ii) of the Act.

4. We have been taken through the relevant document and evidence in this case. The grant is called the Karuvoolam Madurai Service Grant. This

is for rendering service to protect the jewels of the Thinipparankundram temple. We have carefully gone through exhibit B-1, which is an extract

from the Inam Fair Register and exhibit B2 which is a certified copy of the extract of the inam settlement in respect of T.D. 1112. In column 8 of

exhibit B-1. it has been specifically stated that the grant is for the service of securing the Karuvelam or the jewels of the Pagoda of

Thirupparankundram Subrmaniaswami. We take it that Karuvelam mentioned in this document really means the Karvoolam, viz., the treasury of the temple. Columns 19, 20 and 21 also make it clear that it is a personal grant burdened with service. The evidence of P.W. 1, the vendor of the

Respondent coupled with exhibits B-1 and B-2 clearly establishes that this is a personal inam grant burdened with service and we have absolutely

no hesitation to confirm the finding of the authorities below that it is a personal grant burdened with service.

5. Before dealing with the other contentions raised by Mr. V. Srinivasan, we can usefully deal with the law on the subject with reference to the

relevant provision in Act XXX of 1963.

6. Section 8(2) Clauses (i) and (ii) read as follows:

Notwithstanding anything contained in Sub-section (1), in the Madras Hindu Religious and Charitable Endowments Act, 1959 (Madras Act XXII

of 1959) and in the Madras (Transferred Territory) Incorporated and Unincorporated Devasthanam Act, 1959 (Madras Act XXX of 1959) the

following provisions shall apply in the case of lands in aniruvaram minor inam granted for the support or maintenance of a religious institution or for

the performance of a charity or service connected therewith or of any other religions charity:

(i) where the land has been transferred by way of sale and the transferee or his heir, assignee legal representative or person deriving rights through

him had been in exclusive possession of such land;

(a) for a continuous period of sixty years immediately before the 1st day of April, 1960, such person shall with effect or and from the appointed

day, be entitled to a ryotwari patta in respect of that land.

(b) for a continuous period of twelve years immediately before the 1st day of April, 1960, such person shall with effect on and from the appointed

day, be entitled to a ryotwari patta if he pays as consideration to the Government in such manner and in such number of instalments as may be

prescribed as amount equal to twenty times the difference between the fair rent in respect of such land determined in accordance with the

provisions contained in the Schedule and the land revenue due on such land.

(ii) in the case of any other land, the institution, or the individual rendering service shall, with effect on and from the appointed day, be entitled to a

ryotwari patta in respect of that land.

Explanation: For the purposes of this Sub-section, ""Land Revenue"" means the ryotwari assessment including the additional assessment water-cess

and additional water-cess.

Section 3, Clause (o) of the Act states:

With effect on and from the appointed day and save as otherwise expressly provided in this Act:

(a) ....

(b) ....

(c) all rights and interests created by the inmadar in or over his inam before the appointed day, shall, as against the Government, cease and

determine.

There is absolutely no difficulty in coming to the conclusion that the appointed day'' is 15th February 1965 and the same is clear from the

notification which has been produced before us. If that be so, the sale deeds exhibits A-9 and A-10 which are of the year 1962, are definitely

before the appointed day. The transferee or his heir, assignee, legal representative etc. occurring in Section 8(2)(i) will take in the predecessors-in-

interest of the property concerned. If that be so, the Respondent can take on their possession to that of their predecessor, who is Somasundaram

Pillai in this case, and his right, as far as the extent of 87 1/2 cents is concerned, accrues under exhibit A-1 dated 19th February 1947. This is

definitely 12 years before the first day of April, 1960. If that be so, the claim of the Respondent for patta will squarely come under Sections 8(2)(i)

(b), of the Act. Section 8(2)(i)(b), as we have referred to already, contemplates the liability of a person to pay certain consideration to the

Government. Mr. T.R. Mani fairly states that the authorities below ought to have granted patta for this 87 1/2 cents only u/s 8(2)(i)(b) of the Act

and that the Respondent have to pay the consideration as contemplated u/s 8(2)(i)(b). For this purpose alone the matter has to be remanded to the

file of the Settlement Tahsildar for the purpose of ascertaining the consideration to be paid to the Government and the patta can be granted subject

to the condition of paying the consideration that will be decided by the settlement Tahsildar. In this connection, we state that the patta granted by

the authorities below for this 87 1/2 cents u/s 8(1) is not correct.

7. Mr. V. Srinivasan contended that the inam land is inalienable, being personal inam grant burdened with service. We are not able to appreciate

this argument, when we are considering the grant of patta u/s 8(2) of the Act. It is only for such cases of alienation, the Act provided the machinery

for grant of patta of the persons contemplated u/s 8(2)(i)(a) or (b). We have already discussed as to how the Respondent come within the

provision of Section 8(2)(i)(b) for grant of patta in respect of this 87 1/2 cents of land which they have acquired through exhibits A-9 and A-10.

8. As regards the balance of the land involved in, this case, Mr. T.R. Mani fairly concedes that it will not come either u/s 8(2)(i), Clause (a) or

Clause (b). This is because of the fact that the vendor under exhibit A-9 and A-10 got only 87 1/2 cents under exhibit A-1 dated 19th February

1947. With regard to the balance, which is 96 1/2 cents, the grant of ryotwari patta has to be considered only u/s 9(1)(ii) of the Act. Section 9(1)

(ii) of the Act reads:

Subject to the provisions of the next succeeding Section, where in respect of an inam land no person is entitled to a ryotwari patta u/s 8 and the

land vests in the Government, the persons specified below shall be entitled to a ryotwari patta in respect of that land in the following order of

preference:

(i) firstly ....

(ii) Secondly, if there is no such persons as is referred to in Clause (i) then, a person who had been lawfully admitted into possession of such land

on or after the 27th day of September 1955 and who had been personally cultivating such land ever since....

As far as this 96 1/2 cents of land is concerned, the same is covered, along with the 87 1/2 cents of land, under exhibits A-9 and A-10, which are

all sale deeds in favour of the Respondent, executed by Somasundaram Pillai. Somasundaram Pillai as P.W. 1. has no objection to the grant of

patta in favour of the Respondent herein. Admittedly the Respondent have came into possession of the land subsequent to 1955. For this 96 1/2

cents, the twelve years period contemplated u/s 8(2)(i)(b) is not available since under exhibit A-1 dated 19th February, 1947 this portion is not

covered. Inasmuch as the Respondent came into possession of this 96 1/2 cents subsequent to 1955, Section 9(1)(ii) alone will apply for grant of patta to the Respondent and if that be so, there must be a finding as to whether the Respondent have personally cultivated such land as and from

the date of their purchases. We do not have any such finding to this effect. Hence, the grant of patta in respect of this 96 1/2 cents by the

authorities below has to be set aside and the matter has to be remanded to the settlement Tahsildar for the grant of patta as provided u/s 9(1)(ii) of

the Act.

9. For all these reasons, the appeal is allowed in terms indicated above and the matter is remanded to the file of the Settlement Tahsildar for the

purpose of granting the ryotwari patta both in respect of 87 1/2 cents and the 96 1/2 cents of land in accordance with the observations we have

made in the above paragraphs. There will be no order as to costs.