
(1960) 01 AP CK 0026
In the Andhra Pradesh High Court
Case No : Writ Petition No. 378 of 1957

V. Sessa Sarma	Vs	APPELLANT
State of Andhra Pradesh and Another		RESPONDENT

Date of Decision : 13-01-1960

Acts Referred:

Andhra Pradesh (Andhra Area) Inams (Assessment) Act, 1955 — Section 3
Constitution of India, 1950 — Article 14, 19(1), 31(2), 31A(1)

Citation : AIR 1960 AP 461

Hon'ble Judges : Satyanarayana Raju, J; Anantanarayana Ayyar, J

Bench : Division Bench

Advocate : D.V. Reddi Pantulu, for I. Balaiah and M.V. Srinivasa Rao, for the Appellant; 3rd Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Satyanarayana Raju, J.—This is a petition, under Article 226 of the Constitution of India, for the issue of a writ of mandamus directing the State of Andhra Pradesh and the Collector of Kurnool (respondents 1 and 2 respectively) to forbear from enforcing the Andhra Inams (Assessment) Act, 1955.

2. The petitioner is the managing Trustee of a group of temples situated at Oravakallu in Kurnool District. These temples own about Acs. 247-00, classified as Inam and bearing an aggregate quit-rent of Rs. 197-4-0. After the enactment of the Andhra Inam (Assessment) Act, 1955 (hereinafter referred to as "the Act"), the assessment on the lands was revised and enhanced to Rs. 835-13-0 and a demand notice was issued to the Executive Officer of the temples to pay the said sum. The revised demand, according to the petitioner, represents a four-fold increase on the assessment previously levied and collected.

3. The petitioner impugns the validity of the Act on the following grounds:

1. The land revenue or assessment covered by item 45 of the State List is not a tax.

2. The levy of full assessment under the Act has the effect of interfering with the fundamental rights of the petitioner guaranteed under Articles 19(1)(f) and 31(2) of the Constitution.

3. The levy of full assessment on Inam lands has the effect of resumption of the inams without providing for the payment of compensation.

4. The act is a colourable piece of legislation.

5. The Act contravenes Article 14 of the Constitution as it chooses only certain Inam lands for levying full assessment while other types of Inams are left out from the purview of the Act.

4. For a proper appreciation of these contentions, it is necessary at the outset to consider the nature of Inam tenure and the changes brought about by the impugned Act. The word Inami literally means a "gift". Wilson's Glossary contains the following definition of Inam:

"In India, and especially in the south, and amongst the Maharatas, the term was socially applied to grants of land held rent-free, and in hereditary and perpetual occupation: the tenure came in time to be qualified by the reservation of a portion of the assessable revenue, or by the exaction of all proceeds exceeding the intended value of the original assignment: the term was also vaguely applied to grants of rent-free land, without reference to perpetuity or any specified conditions. The grants are also distinguishable by their origin from the ruling authorities, or from the village communities, and are again distinguishable by peculiar reservations, or by their being applicable to different objects."

The existence of the beneficial tenure, known originally by the Sanskrit name manyam, and latterly after the Mahomedan conquest by the Arabic term Inam can be traced to a very remote antiquity. It was the custom of the Hindu rulers to grant assignment of land, revenue free, or at low quit-rents for the payment of troops and civil officers for the support of temples and their servants, and charitable institutions for the maintenance of holy and learned men, or for rewards for public service. (Vide Baden Powell's Land-Systems of British India, 2nd Edn. 1907, Vol. 1, at p. 53). This practice of allotting lands for the above purposes was followed by the Mohammedan rulers. The effect of the Mohammedan rule was to add greatly to the already existing land exempt from payment of revenue.

In the period of political confusion which ensued during the latter part of the eighteenth century, when the supremacy in Southern India was contested by the British, the French and various local powers, large extents of land were granted as Inam by parties who had not the least authority to make such alienations. During the earlier years of British rule, the Government of the day, following the custom of the country, adopted the practice of rewarding meritorious services by grants of jagirs. The large sacrifice of State revenue involved under this arrangement attracted the attention of the British administration at an early

period, and in Madras a special Inam Commission was appointed to deal with this subject. In addition to dealing with the Inams proper, the Commission investigated the titles of Service Inam holders.

When the title to an Inam based on the length of possession was once established, the Commission proceeded to deal with it in the following manner. In the case of Inams held for personal benefit, the Inamdar was either allowed to retain the Inam in accordance with the actual terms of the tenures subject to the liability of lapse, or without power of alienation or he was given the option to enfranchise the Inam that is to say, convert it into his own property on payment of a fixed commutation sum, equal to so many years of quit-rent, the amount of quit-rent to be estimated in terms generally favourable¹ to the inamdar in order to induce him to take advantage of the arrangement afforded. With regard to service inams, that is, Inams that were attached to services still required, they were continued intact; but where the services were such that they could not be continued, the holder was asked to compulsorily enfranchise the Inam, the value to be fixed in the form of annual quit-rent. As regards the lands forming endowments of mosques, they were to be confirmed on their existing arrangements and to be resumable only in the event of the object for which they were held had ceased to exist.

5. Inams may now be classified as (1) still unenfranchised; (2) enfranchised but liable to Jodi or quit-rent as the case may be; (3) enfranchised, the rent being computed or redeemed.

6. Apart from the inam tenure, a system which was most prevalent in many parts of what was formerly known as the Madras Presidency was the ryotwari tenure, whereunder all arable land, whether cultivated or waste, was divided into blocks, the assessment of each block being at a fixed rate of a term of years and the exaction of revenue from each occupant of the area of land thus assessed. The intention, of the founders of the ryotwari system was to make the assessment on land permanent. But subsequently the principle of permanency was abandoned and the system of periodical revision of assessments on all ryotwari lands was adopted. Under the rules at present in force, every registered holder of land is recognised as its proprietor. He is at liberty to sublet his property or to transfer it by gift, sale, or mortgage. He cannot be ejected by Government so long as he pays the fixed assessment. The ryot under this system is virtually a proprietor on a simple and perfect title.

7. It will be seen from the foregoing review of the Inam and Ryotwari tenures that lands in former category have been enjoying favoured terms when compared with the lands assessed under the ryotwari system. It was with a view to make land revenue assessment rational and uniform that the Act came to be enacted. The following extract from the Statement of Objects and Reasons appended to the Bill explains the intendment of the Act.

"Minor inam lands in this State are either held free of assessment or are liable

only to pay a quit rent, jodi or other amount of a like nature which is much less than the assessment payable on similar ryotwari lands in the neighbourhood. The Government consider that there is little justification for any discriminatory treatment in favour of minor inams in respect of their assessment. With a view, therefore, to equalising the burden of land revenue and in order to augment the finances of the State, the Government have decided to undertake legislation for the levy of full assessment on minor inam lands in this State as in the case of ryotwari lands....."

Now, let us look at the impugned Act. The Act received the assent of the President on 21-11-1955, and was published in the Andhra Gazette Extraordinary on 26-11-1955. The descriptive title runs as follows:

"An Act for the levy of Full assessment on certain inam lands in the State of Andhra."

The Act applies to all inams in the State of Andhra described in Section 2(b), Under this provision Inam is said to mean "an inam land as defined in Clause (c) or as assignment of land revenue on such inam land." "Inam Land" has been defined to mean any land the grant of which in inam has been made confirmed or recognised by the Government, and to Include an inam land in a ryotwari area, but does not include an inam constituting an estate under the Madras Estates Land Act, 1908 (Madras Act I of 1908).

8. Section (3) declares:

"Notwithstanding anything contained in any engagement contract, grant or other law for the time being in force, it shall be lawful for the State Government to levy on every inam land, with effect from the fasli year commencing on 1-7-1955, an assessment at the following rates;

(a) if a settlement notification is in force in the village in which the inam land is situated, at the rates of assessment set out in such notification for lands of the same taram and classification;

(b) in cases not falling under Clause (a), at the rates of assessment to be fixed By the Collector with reference to settlement rates for similar lands in neighbouring ryotwari villages."

Section 3 contains three provisos and an explanation which read as follows:

"Provided that if any jodi or kattubadi is payable in respect of an inam to the landholder of an estate, the amount of such jodi or kattubadi shall be deducted from the assessment payable to the State Government under tin's section:

Provided further that in the case of an inam granted on service tenure which is proved to consist of an assignment of land revenue only, no assessment under this subsection shall be leviable and the inamdar shall be liable to pay only the quit-rent, jodi, kattubadi or other amount of a like nature, if any, which he has been paying before the commencement of this Act.

Provided also that no assessment under this subsection shall be leviable where a service inam belongs to any of the following classes of inams, namely, (i) village carpenter, (ii) village blacksmith, (iii) village barber, (iv) village washerman, (v) village potter, (vi) village purohit or priest, (vii) village astrologer, (viii) village archaka, (ix) village vetti, (x) village nirganti, (xi) village madiga and such other service inams which the State Government may by special or general order notify in that behalf in the Andhra Gazette, and the holder of such inam shall be liable to pay only the quit-rent, jodi, Kattubadi or other amount of a like nature, if any which he has been paying before the commencement of this Act, provided that the inamdar continues to be in possession and enjoyment of the inam land.

Explanation: If any quit rent, jodi, kattubadi or other amount of a like nature was payable to the State Government immediately before the commencement of this Act in respect of any inam, the assessment leviable on such inam under this section shall be in lieu of such quit rent, jodi, or other amount aforesaid....."

Section 4 provides that in the case of an inam granted for the purpose of any service, it shall be presumed, in the absence of evidence to the contrary, that the inam consists not merely of an assignment of land revenue payable in respect of the land but also of the land. Section 6 preserves the rights as between the Inamdar and other persons, if any, in possession and enjoyment of Inam land.

9. The Act empowers Government to levy in lieu of quit rent jodi or similar amount in respect of the inam lands, an assessment at the settlement rates for similar ryotwari lands in the village where the village has been settled and in other cases to be fixed by the Collector with reference to the settlement rates for similar lands in the neighbouring ryotwari villages.

10. As to the legislative competence of the State Legislature to pass the impugned Act, the following items in the State List put the matter beyond doubt.

"45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

49. Taxes on lands and buildings."

The first question that falls to be considered is whether the assessment is a tax, and it is contended that it is not. This argument is primarily based on the fact that the Act uses the word "assessment" and not "tax". A tax is in the nature of a compulsory exaction of money by a public authority for a public purpose, the payment of which is enforced by law. The imposition is made for public purposes to meet the general expenses of the State. It is a common burden and the only return the tax-payer gets is the participation in the common benefits conferred by the State. In all countries it has (long) been recognised that the sovereign is entitled to levy tax on all occupied lands. It was observed by Subrahmanya Ayyar O.C.J. in *Modathapu Ramaya v. Secy. of State for India* ILR 27 Mad 386 :

"Such imposition is in the due exercise of the prerogative possessed in this

country by the Crown, viz., that of exacting from a subject holding arable land the Crown's proper share of the produce thereof or the equivalent of such produce, which is the-modern land revenue."

In the same case. Bhashyam Iyengar, J., observed :

"The right of Government to assess land to land revenue and to vary such assessment from time to time is not a right created or conferred by any statute, but, as stated in my judgment in *Bell v. Municipal Commissioner for the City of Madras* ILR 25 Mad 457 at p. 482, is a prerogative of the Crown according to the ancient and common law of India. The prerogative right consists in this, that the Crown can by an executive act determine and fix the "Rajabhagam" or king's share in the produce of land and vary such share from time to time."

In *Echikan Charakare Kelu Nair Vs. The Secretary of State for India in Council*, Venkata Subba Rao, J., pointed out:--

"The right of the Government to assess land to land revenue and to vary it is not a right created or conferred to any statute but, as stated above, the Crown possesses the prerogative of exacting from a subject holding arable land, its share of the produce or the equivalent of such produce."

In *Girijananda v. State of Assam*, (S) AIR 1958 Gu 33, it was observed:

"There is now a general consensus of opinion that land revenue should be regarded as a tax and not a rent. It is merely a portion of the profits of agriculture compulsorily appropriated by the State without any consideration. It is a tax which is no more than a compulsory exaction of money by the State in the exercise of its sovereign power for public purposesAll bite of income or profit taken by the State in the exercise of its sovereign powers are in reality taxes no matter under what name they appear."

We are in respectful agreement with the above observations.

11. The expression "revenue assessment" has been used in the Act in accordance with long legislative practice. (Vide Madras Act I of 1880, Madras Act II of 185R, Andhra Act 22 of 1956 and Andhra Act 21 of 1957). According to usage, the word connotes only tax though it is termed assessment.

12. Having regard to entries 45 and 49 of List II of the Seventh Schedule to the Constitution, the legislative competence of the State's Legislature to enact the impugned Act has not been questioned, if the State Legislature is competent, then is the Act ultra vires of the Constitution as infringing the fundamental rights conferred upon the petitioner under Articles 19(1)(f) and 31(2)? In this context, it is necessary to consider whether the impugned Act is protected by the provisions of Article 31-A of the Constitution for, if it is so protected, the question of infringement of the fundamental rights of the petitioner under Articles 14, 19 and 31(2) will not arise.

13. Article 31-A reads as follows:--

"Notwithstanding anything contained in Article 13, no law providing for--

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any rights, or..... shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

14. What is protected by Article 31-A is a law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of such rights. The impugned Act having been reserved for the consideration of the President, has in fact received his consent and therefore the proviso to Article 31-A does not come into play.

15. The Constitution (Fourth Amendment) Act, 1955, amended clause 2 of Art. 31 and inserted clause (2-A) in that Article. Article 31(2-A) reads:--

"Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

The result of the amendment is that unless the law depriving any person of his property provides for the transfer of ownership or right to the possession of any property to the State, that law does not amount to "acquisition or requisition of property" and therefore the limitations placed under Clause (2) will not apply to such law.

16. The argument for the petitioner is that there has been a virtual deprivation of property by reason of the levy of full assessment under the Act. In our opinion, this contention is fallacious. The petitioner's rights over or in relation to his land are not affected. Only the assessment has been increased. It is impossible to hold that a mere increase in the assessment involves the transfer or extinguishment of rights in or over Immovable property. The word "acquisition" in Article 31-A(1) (a) implies that there must be an actual transference of the land or all those rights and it must be possible to indicate some person or body to whom the land or such rights are transferred. As pointed out by the Federal Court in AIR 1944 62 (Federal Court) it cannot be suggested that when land revenue is increased, there is any transference to the State Government or any other person of any land or rights in or over immovable property, which remain in the same possession or ownership as immediately before the increase of assessment.

16a. The following observations of the Federal Court in the AIR 1941 16 (Federal Court) are pertinent in this context:

"The adjustment of rights and duties is an inevitable process and one of the functions of the Legislature in a modern State is to effect that re-adjustment with justice to all concerned. It is not, however, for this Court to pronounce upon the wisdom or the justice in a broader sense, of legislative acts."

It is then argued that the effect of levying full assessment is to convert the petitioner's Inam land into ryotwari and has the effect of resumption of the Inam. We cannot accede to this contention. Where the grant is of land revenue alone, resumption has no effect on land and interference therewith is not at all intended. The only effect of resumption is to impose full assessment on land which was till then revenue free, either wholly or partially, and classify it under the head of ryotwari.

17. The Act does not infringe any right to property and there has been no cancellation of the grant. There is no putting an end to the grant and the Act specifically excludes cases where the grant was of the land revenue alone. The second proviso to Section 3 saves all grants of land revenue and makes the Act applicable only to cases where the grant was of the land. As we have already pointed out, mere increase of assessment in land revenue involves no acquisition of land or any rights in or over immovable property.

18. It is then argued that the act is a colourable piece of legislation. The legal position with regard to colourable legislation was stated by their Lordships of the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, thus:--

"The Legislature can only make laws within its legislative competence. Its legislative field may be circumscribed by specific legislative entries or limited by fundamental rights created by the Constitution. The Legislature cannot overstep the field of its competency, directly or indirectly. The Court will scrutinize the law to ascertain whether the Legislature by device purports to make a law which though in form appears to be within its sphere, in effect and substance, reaches beyond it. If in fact, it has power to make the law its motives in making the law are irrelevant."

The idea conveyed by the expression "colourable legislation" is that although apparently the legislature in passing the statute purported to act within the limits of its powers, yet in substance and in reality transgressed these powers, the transgression being veiled by what appears on proper examination, to be a mere pretence or disguise. It is by no means easy to impute a dishonest motive to the legislature of the State and hold that it acted mala fide and maliciously in passing the impugned Act.

19. The last of the contentions is that the Act is a discriminative piece of legislation. Assuming it is open to the petitioner to impugn the vires of the Act on the ground of its being a discriminative piece of legislation, it may be noted that mere differentiation does not make a legislation obnoxious to the equal protection clause. The Legislature has always the power to make classification

and all that is necessary is that the classification should not be arbitrary but must bear a reasonable relation to the object which the legislation has in view, it must be observed that the Act itself exempts from its operation minor office holders who have been rendering service to the community. There is thus a reasonable classification bearing a just relation to the object sought to be achieved. We do not think that the Act is open to challenge on this ground.

20. All the contentions raised by the petitioner having been negatived, this writ petition fails and is dismissed with costs. Advocate's fee Rs. 100/-.