
(1924) 11 MAD CK 0019
In the Madras High Court

Venkatarama Iyer

APPELLANT

Vs

R. Narayanaswami Iyer

RESPONDENT

Date of Decision : 04-11-1924

Acts Referred:

Citation : AIR 1925 Mad 1098

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The only point argued in this second appeal is that the tenant is not liable to pay any amount of kaval fee. The District Judge

has held that the tenant is liable to pay the kaval fee as part of the rent payable by him. The contention of Mr. Viswanatha Sastri is that the estate

does not maintain any kaval now, nor does it maintain any kind of Police supervision and, therefore, the amount is not payable as kaval fee. The

land is in what is known as Tanjore Palace Estate. It is well-known that 96 villages were in the possession of the Rajah of Tanjore till his death in

1855 and after his death the East India Company in the exercise of its sovereign powers annexed these villages. But in 1862 the Government

granted these villages to the heirs of the late Rajah. It is in evidence that kaval fee was collected from the tenants for a long time at least from 1862.

There is no specific evidence on this point, but the learned District Judge has come to the conclusion that it must have been paid for a long time.

The question is whether this fee, though paid for a long time, is one which could be legitimately demanded by the landlord. It is well-settled that the

mere fact that a certain cess or fee is paid by the tenant for a number of years is not by itself a sufficient ground for holding that it must have had a

legitimate origin. But in considering whether the cess is legal or illegal, the circumstance that it has been paid for a number of years may be taken into consideration. The learned Judge has relied upon Regulation I of 1816 as supporting the inference that this kaval fee must have been paid for a very long time. Regulation I of 1816 regulated or put upon a statutory basis the collections that used to be made for the purpose of maintaining the Police force. When the East India Company took over the major portion of the Tanjore District from the Rajah, it dispensed with the Police then in existence and regulated the Police force according to the modern methods, and in so doing it appropriated for the maintenance of the Police the income that was derived for that purpose from the villages which were handed over to the East India Company by the Rajah. The argument for the appellant is that the Regulation could not possibly have had any application to the 96 villages in the possession of the Rajah. This argument, no doubt, is sound, for the East India Company could not have passed any Regulation with regard to the villages in the possession of the Rajah who was then an independent Prince. But when the East India Company annexed the villages after the death of the Rajah, was the kaval fee collected by the Government or not? There is no evidence on this point, and it is to be regretted that both sides did not choose to adduce evidence about this. But when the Government granted the villages to the heirs of the Rajah, it imposed upon these villages what it terms jodi or kaval fee. In Ex. I it is termed jodi, but in Exs. F,G and H series, it is called kaval. The appellant's contention is that what was imposed on these villages, has had nothing to do with what was collected for the maintenance of the Police before 1856. It is difficult to follow this argument. When the Government granted these villages to the heirs of the Rajah, it reserved to itself only the payment of a small amount, and the village accounts, though maintained only by the karnams give an indication as to why this small demand was made by the Government from the heirs of the Rajah. The village account shows that what was demanded was only kaval. The kaval fee having been put on a statutory basis by Regulation of 1816, it became a legitimate demand at least from 1856 to 1862. In other words Regulation of 1816 became applicable to these villages, on their annexation and when the grant was made in 1862 the Government simply handed over the villages with the burden for the maintenance of the Police which the Government

was then maintaining. I, therefore, consider that the learned Judge has come to the right conclusion that the "kaval" is not an illegal cess or exaction

by the landlord and that it has had a legitimate origin.

2. The next question is, What is the amount payable by the tenant? Mr. Viswanatha Sastri suggests that the tenant must pay half and the landlord

must pay the other half. On the other side Mr. Krishnaswami Iyer argues that there has been no change in the amount payable by the tenant and,

therefore, it must be taken that no heavier burden was thrown upon him by the mere fact of the land having been handed over to the heirs of the

Rajah. In other words, when the Government handed back these villages to the heirs of the Rajah, it did not impose additional burden upon the

tenants. It is to be regretted as I have already observed, that there is no specific evidence about this. On a consideration of all the circumstances,

the District Judge has come to the conclusion, that what is claimed now is not an illegal demand. He seems to base it upon the ground that at the

time when the commutation took place, it was done in a way favourable to the tenant. Whether it is so or not, in the absence of any specific

evidence that the burden on the tenant has been increased, I am unable to say the learned Judge has not come to the right conclusion on this point.

It is unnecessary, in this view of the case, to consider whether the tax has become illegal, by reason of the fact, that the estate does not maintain a

Police for watching the villages. As I have already observed, the duty has been taken over by the Government and the payment goes to the

Government no doubt through the estate. The Government is maintaining the Police for the safety and security of the people, as well as their

possessions and, therefore, I do not see, how it can be said, the Police services are not rendered by the Government.

3. In the result, the second appeal fails and is dismissed with costs.