

(1962) 04 MAD CK 0004
In the Madras High Court

Vyравan Chettiar Chatram by Hereditary Trustee, D.
Shanmuga Raja

APPELLANT

Vs

The Board of Revenue by the Commissioner of Settlements of
Estates

RESPONDENT

Date of Decision : 11-04-1962

Acts Referred:

Madras Estates Land Act, 1908 — Section 6A

Citation : (1962) 75 LW 689 : (1963) 1 MLJ 20

Hon'ble Judges : Veeraswami, J

Bench : Division Bench

Judgement

Veeraswami, J.—These petitions under Article 226 of the Constitution raise a common question of interpretation of Section 35-A of

Madras Act XXVI of 1948. That section as well as Section 30-A were introduced by Madras Act XXXIV of 1958. Before dealing with the

actual problem arising in these petitions, and noticing the facts relevant thereto, it is, in order to have a better appreciation, necessary even at -the

outset to refer to the reasons, why the Amending Act of 1958 was passed. In Ganga Naicken and Another Vs. A. Sundaram Aiyar, it was held

that a minor Dharmilla inam formed part of the parent estate and on a notification u/s 3(b) of Madras Act XXVI of 1948 the entire interest in the

major as well as the minor inams as parts of one estate will pass to the Government. It was further held that such a minor inamdar would, under the

provisions of Madras Act XXVI of 1948, be entitled to a proportionate share out of the compensation which of course would be computed for

the estate as a whole. S. Marimuthu Pillai and Others Vs. T.R. Krishna Joshi and Others, decided by a Division Bench of this Court arose out of

an order passed by the Estates Abolition Tribunal, Madurai, on a petition u/s 42 of Madras Act XXVI of 1948, seeking payment of advance

compensation deposited with the Tribunal in respect of Karungalur Estate in Tanjore District. The petitioner, who had already owned kudiwaram

interest, acquired the melwaram interest in the identical land. The estate in which the village is situate was admittedly on inam estate within Section

3(2). The Tribunal held that the petitioner was not entitled to any portion of the compensation as and for the melwaram interest he had purchased.

One of the reasons which prompted the Tribunal was that when a person who held a kudiwaram interest in a land obtained by purchase or

otherwise melwaram interest in it, he did not thereby become a landholder within the meaning of Section 3(5) of the Madras Estates Land Act. In

taking that view the Tribunal was supported by Ganjain Manikyamba and Another Vs. Pasala Mallayya and Others, where the learned Judge

though on a slightly different reason, reached the same conclusion on the basis of Section 6-A of the Madras Estates Land Act corresponding to

the old Section 6(6), to wit, when the kudiwaramdar acquired melwaram interest, there was no merger of the two interests and the melwaramdar

held such interest only as melwaramdar and not as a landholder. The Tribunal's further ground in that case was that when the estate was notified

under Madras Act XXVI of 1948 it was the interest of the landholder qua landholder that became vested in the Government u/s 3(b) and the

compensation provided for in the Act was only for that interest. This reason, the learned Judges declined to accept. They held that on a correct

interpretation of the relevant provisions of the Act, the appellant was entitled to compensation for the melwaram interest taken over from the

notified date. The conclusion of the Division Bench was summed up thus:

By reason of the acquisition of the melwaram interest the appellant had obtained a share of the melwaram which they retained as a separate interest

distinct from their occupancy rights in their holdings. That interest became transferred to and vested in the Government u/s 3(b) of the Act. By

reason of Section 3(e) the appellants were the persons who became entitled to the compensation from the Government as provided in the Act. In

the computation of the basic annual sum and as part of one of its components the annual ryotwari demand in respect of their holdings had to be

taken into account. The logical result of the foregoing analysis would be that the appellant would be entitled to a share in the compensation

deposited with the Tribunal.

S. Marimuthu Pillai and Others Vs. T.R. Krishna Joshi and Others, therefore lays down two propositions:

(1) A kudiwaramdar does not become a landholder within the meaning of Section 3(5) of the Estates Land Act by reason only of acquisition by

him of the melwaram in the same land; and (2) In the computation of the basic annual sum and as part of one of its components, the annual

ryotwari demand in respect of his holding should be taken into account. It was to reverse, as it seems to me, this decision on both the points,

particularly, the second point that Madras Act XXXIV of 1958 was enacted. That this is the object of the amending legislation is also explicit from

the Statement of Objects and Reasons to the amending Bill which will be useful to extract":

Under Section 6-A of the Madras Estates Land Act, 1908 (Madras Act I of 1908), a person having a right of occupancy in land does not lose it

by subsequently becoming interested in the land as landholder. Based on this section, the High Court has given a ruling that a person who owned

originally the kudiwaram interest in a land in an estate and who subsequently acquired the melwaram interest also in that land would, on the taking

over of the estate under the Abolition Act, be entitled to ryotwari patta for the land, as a ryot u/s 11 of that Act; that the ryotwari assessment on

the land should be included in the computation of the basic annual sum in respect of the estate; and that the person referred to would be entitled to

a share in the compensation payable in respect of the estate In view of this ruling, it has become necessary to amend the Abolition Act suitably, so

as to provide that any person who had, immediately before the notified date, any right or interest in any land in an estate as a landholder shall be

deemed to be a landholder of that estate and that the ryotwari assessment imposed on, and the miscellaneous revenue derived from all lands in the

estate in respect of which the landholder is entitled to ryotwari patta under any provision of the Abolition Act should be excluded in determining the

basic annual sum. New Sections 30-A and 35-A are proposed to be inserted to secure, this object.

2. I have referred to the earlier state of the law as expounded by this Court and the legislative history of Sections 30-A and 35-A with a view to

appreciate the precise nature and scope of what the Government considered to be a defect which it sought to remedy by the amending provisions

of those sections. I shall presently refer to the terms of these sections.

3. The facts in W.P. No. 747 of 1960 only need to be stated as the decision rendered in respect thereto will govern the other petitions also. The

petitioner in that case is the ex-landlord of Sivaganga and hereditary trustee of Sivaganga Devasthanam and Chatrams. The chatrams also appear

to own a number of villages of which Melaseegungulam was one. That village was notified and taken over as an inam estate with effect from 1st

October, 1951, under the provisions of Madras Act XXVI of 1948. The Director of Settlement who is the authority constituted for the purpose

arrived at the total ryotwari demand for the village as Rs. 343-5-3 and fixed the basic annual sum at Rs. 331-14-2 after taking into account the

income from miscellaneous source of revenue and after making deductions of the amounts referred to in Section 35 of the Act. The village being an

inam estate, it is governed by Section 38 which provides for payment not of compensation but what is called a tasdik allowance which in the

case of the entire inam estate, will be the basic annual sum and in the case of part of an inam estate such portion of the basic annual sum as may on

a calculation in the prescribed manner be ascribed to that part. It is common ground that Melaseegungulam contained certain post-settlement minor

inams. In view of The State of Madras and Another Vs. V. Srinivasa Ayyangar, ., these minor inams too passed to the Government along with the

major inams from the notified date leaving only the right of Dharmilla inamdar to get his proportionate compensation. When the petitioner applied

for a copy of the data sheet and obtained the same from the Director of Settlements, he found according to him, that for the major inam constituting

his portion of the estate only Rs. 270-72 nP. was arrived at as the basic annual sum. The petitioner's complaint is that while in respect of an extent

of A-134.65 the assessment amounted to Rs. 289.76 nP., the Director of Settlements deducted from out of that amount a sum of Rs. 101-64 NP.

representing the assessment on the ryoti land held by the Dharmilla inamdar in the major inam as a ryot of the petitioner for which the ryot became

entitled to ryotwari patta u/s 11 of Madras Act XXVI of 1948.

4. The petitioner's objection is to this deduction, his contention being that such deduction is not warranted by Section 35-A. Against the order of

the Director, the petitioner filed an appeal to the Board of Revenue which, by its order dated 24th November, 1959, declined to interfere with the

view of the Director. The Board's view is this:

The person who is a Dharmilla inamdar in respect of any lands in an estate is a landholder of the estate. Vide Section 2(8) of the Abolition Act.

The clear scheme of the Act is that all the landholders are treated together as one group which has to share the lump sum compensation determined

for the estate as a whole. Another clear principle in the scheme of the Act and which has been placed beyond doubt by Section 35-A is that

ryotwari assessment on any land in the estate in respect of which any of the landholders as defined in Section 35-A (1) is entitled to ryotwaripatta

under any provision of the Act should be excluded in determining the basic annual sum. This is a mandatory provision which affects the landholders

of the estate as a group, irrespective of which of them is entitled to ryotwari patta in respect of that land and which of them has the melwaram right

in respect of that land. Section 35-A (1) lays down clearly that any person who had immediately before the notified date, any right or interest in

any land in the estate as a landholder should be treated as a landholder of the estate as a whole, for the purpose of determining the basic annual

sum.

The principle of this Act is that compensation need not be paid in respect of land for which a landholder in the estate is entitled to ryotwari patta

and if, in respect of any such land, before the notified date, the landholder owned only the kudiwaram and another landholder in the estate was

entitled to melwaram, that melwaram right should be ignored for the purpose of determining the basic annual sum for the estate as a whole. As

already mentioned the compensation is a lump sum fixed for the landholder of the estate including Dharmilla inamdars treating them as one group,

and the question of its apportionment among the landholders is quite another matter.

5. The question for my determination is whether the view so expressly expressed by the Board of the scope and effect of Section 35-A is correct.

In other words, the question is: while in computing the basic annual sum u/s 31, the assessment on ryoti lands which are situate within the limits of

the major inam but are held by a Dharmilla or minor inamdar can be properly excluded. Section 35-A reads:

(1) For the purposes of Sections 31, 32, 33, 34 and 35, any person who had immediately before the notified date, any right or interest in any land

in any inam estate as a landholdes, shall be deemed to be a landholder of such estate.

(2) The ryotwari assessments imposed on and the miscellaneous revenue derived from all lands, in an inam estate in respect of which any

landholder mentioned in Sub-section (1) is entitled to ryotwari patta under any provision of his Act, shall be excluded in determining the basic

annual sum.

6. To appreciate the scope of this section, certain other provisions of the Act will have to be noticed. Section 3(b) states the effect of notification of

an estate, namely, on such notification the entire estate vests in the Government free from all encumbrances. Sections 11 to 15 and Sections 17 to

20 show that any claim to patta or other interests will have to be worked out under the relevant provisions of the Act. Section 21 deals with survey

and Section 22 with the final settlement of the notified estate fixing the rates of compensation for the ryoti holdings. Sections 24 to 30 relate to

determination, apportionment and payment of compensation for zamin estates. Sections 31 to 35 relate to component parts of basic annual sum,

computation of ryotwari demand and net miscellaneous revenue in inam estates. Section 25 states that compensation shall be determined for the

estate as a whole and not separately for each of the interests therein. A sum called the basic annual sum shall u/s 26, be first determined in respect

of the estate. The compensation payable for a zamin estate notified and taken over is, u/s 37, a multiple of the prescribed scale of the basic annual

sum. In the case of religious, educational or charitable institutions where the inam estate is taken over, compensation is not payable but only a

tasdic allowance u/s 38(1) which is the basic annual sum or the proportionate part thereof depending on whether the entire or part of the inam

estate is taken over. One other relevant provision is Section 2(8) which states that landholder includes inter lia Darmilla inamdar. Section 31

specifying the component parts of basic annual sum in respect of an inam estate is particularly important. It prescribes what should be taken into account and what are the items to be deducted in order to arrive at the basic annual sum. Clause (1) of this section provides, as one of such components for inclusion, the whole of the gross annual ryotwari demand in respect of all lands in the estate (excluding lanka lands) in respect of which any person other than the landholder is entitled to ryotwari patta as ascertained u/s 32, less the deduction specified therein. In computing the whole of the average net annual miscellaneous revenue another component, the demand in respect of lands for which the landholder is entitled to patta as ascertained u/s 34 is to be disregarded. The purpose of these provisions seems to be patent, namely, that where the landholder is entitled to a patta either in respect of his pannai lands or ryoti lands, no compensation for the melwaram which he owns, is payable to him for the obvious reason that in such cases the revenue, were it to be demanded, would only be payable to himself. In that sense he suffers no loss in respect of the melwaram taken over by the Government and is not for that reason entitled to be compensated for that interest. While that is the position, the effect of *S. Marimuthu Pillai and Others Vs. T.R. Krishna Joshi and Others*, was that when a kudiwaramdar purchased the melwaram interest in the same lands, he did not thereby become a landholder and that he would, therefore, under the provisions of Act XXVI of 1948 be entitled to compensation for his melwaram interest notified and taken over. As I said, Sections 30-A and 35-A were introduced to remedy that position and avoid liability to pay compensation in such cases.

7. The language of Section 35-A which is similar to that used in Section 30-A may at first sight appear to be of wider scope that provided a person was a landholder he would not be, entitled to have the demands in respect of ryoti lands for which ryotwari patta has been issued to a minor inamdar in the same estate, included in the computation of the total demand for arriving at the basic annual sum. In fact it was evidently on that view the Board excluded from computation the demand in respect of ryoti lands for which patta was granted not to the petitioner but to the minor inamdar. But is it the intention of Section 35-A that even though the major inamdar has no patta granted to him in respect of the ryoti lands

lying within the limits of his major inam, the revenue demand in respect of such ryoti lands should be excluded from the annual demand for

purposes of Section 31 on the ground that patta for those lands has been issued to a minor inamdar within the entire estate ? On a careful

consideration of Sections 30-A and 35-A, I am unable to hold that this" is their intention. It is true that a dharmilla inamdar is included in the term

landholder "" as defined by Section 2(8) of Madras Act XXVI of 1948. But that in itself, in my opinion, is hardly a justification to hold Sections 30-

A and 35-A as implying that even though the landholder did not himself possess both the kudi-waram and melwaram interests, nevertheless the

demands in respect of the lands are to be excluded from the components of the basic annual sum. When the dharmilla inamdar owns ryoti lands in

the major inam, he obviously does so not as a. landholder but as a ryoti. Such a person, as it seems to me, cannot certainly apply u/s 13 for grant

of a ryotwari patta for those lands. His claim can only be u/s 11 and in fact it was under that provision the dharmilla inamdar in this case has been

granted patta for the lands, the assessment for which has been excluded from the computation of the basic annual sum referable to the major inam

taken over. Apart from that Sections 27 and 31 contain indications as to what is meant by a landholder for the purpose of those sections. The

landholder referred to under those provisions is one who is himself entitled to a ryotwari patta for the lands and in such cases the demand of

revenue for those lands is liable to be excluded from the computation of the annual basic sum. It does not appear to be the intention of Sections

30-A and 35-A that ryotwari demand for lands for which no patta has been granted to the landholder should be excluded in computing the basic

annual sum. The intention of the section, in my opinion, is only that where the same landholder comes to have both interests, first as a

kudiwaramdar and then, as a melwaramdar, the demand in respect of such lands for which patta has been granted to him, is liable to be excluded

u/s 31(1). This interpretation of the scope and effect of the two sections, as I consider, is not only in consonance with the whole scheme of the

provisions providing for compensation and tasdik allowance but also flows from and supported by the language of the sections themselves

understood in the light of the defect that existed and the historical background of the amending Act of 1958 with the express object of remedying

that defect.

8. I hold that Section 35-A does not for the purpose of Section 31 warrant exclusion from the computation of the basic annual sum the demand for

the lands for which, ryotwari patta was granted only to the minor inamdar. This result applies to the petitions. The petitions are allowed and the

impugned orders are quashed. Rule nisi is made absolute. No costs.