
(1942) 02 MAD CK 0007
In the Madras High Court

Yerranki Papayya Sastri and Another

APPELLANT

Vs

Kola Appa Rao and Another

RESPONDENT

Date of Decision : 12-02-1942

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 15(4)

Citation : AIR 1942 Mad 677 : (1942) ILR (Mad) 944 : (1942) 55 LW 400 :
(1942) 2 MLJ 211

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This matter arises out of an application u/s 15(4) of the Madras Agriculturists' Relief Act (IV of 1938) praying for the

cancellation of arrears of rent on the deposit of the rent for faslis 1346 and 1347 at the rate of Rs. 300 per annum. The deposit was accepted and

in revision it is contended firstly that the lower Court was wrong in assuming that the , applicant was a tenant paying rent to a landholder under the

Madras Estates Land Act so as to come within the terms of Section 15 of Act IV of 1938, and secondly that the lower Court was wrong in finding

that the proper rate of rent was Rs. 300 per annum. The argument on the first point rests on the tenure of the land. The documents filed show that

the land was granted by the zamindar to the present petitioners in the year 1811, that the grant was a ""sarva inam"" not subject to jodi and was in

the enjoyment of the grantee at the time of the inam settlement. It is contended that on these facts the lower Court was not entitled to assume that

the grant was a grant of melwaram so as to make the grantee a landholder within the definition in the Madras Estates Land Act. The contention is

that a grant in inam might be a grant of the Kudiwaram alone, in which case the

tenant under the inamdar would not be a ryot paying rent to a landholder but a mere sub-tenant paying rent to a ryot -without occupancy right. No doubt the word "inam" is used with considerable differences in its precise connotation; but it certainly implies as a rule a grant free of rent or on a favourable rate of rent. My attention has not been drawn to any case in which a mere grant of the kudiwaram right has been described as an inam. There are of course very many cases in which there has been a question whether an inam grant was a grant of the melwaram alone or a grant of both warams. But it seems to me that if the grant were a grant of the kudiwaram alone, it would not be described or treated as an inam, but as a permanent lease or an ordinary ryotwari assignment.

2. On the proved facts of the present case it seems to me quite clear that the melwaram must have been granted to the inamdar, for the grant was expressly free of jodi. It was not subject to any demand of the zamindar. From this fact it seems to me to follow necessarily that when the zamindar made this grant, he divested himself of the right to collect the rent; that is to say, he divested himself of the melwaram. The grant being clearly a post settlement grant, the grantee must be deemed to be a landholder under the Madras Estates Land Act, having regard to the definition in Section 3 (5) of that Act as including a person owning a part of an estate or a person entitled to collect the rents of a portion of an estate by virtue of a transfer from the owner or his predecessor-in-title.

3. The argument with reference to the rate of rent is briefly this. For some years past the tenant had been holding the land under a series of kadapas, of which those relating to the years 1923 to 1931 have been put in evidence, stipulating for a rent of Rs. 620. Section 52 (3) of the Madras Estates Land Act provides that pattas and muchilikas accepted or exchanged shall remain in force till the commencement of the revenue year for which fresh pattas and muchilikas are accepted, exchanged or decreed. The argument is that when once a patta for a particular rate has been accepted, it is not competent for the tenant to plead in bar of any proceedings for the recovery of the rent that the rate of rent stipulated in the patta is not the correct rate. No authority has been propounded in support of this view which seems to me to run contrary to the principles of the Madras Estates Land Act and contrary to many reported decisions. Section 24 of

the Act lays down the basic principle that the rent of a ryot shall not be enhanced except as provided by the Act, Sections 27 and 28 lay down presumptions that the prevailing rate of rent is the correct rate of rent until the contrary is shown. These sections would be meaningless if it were possible for a landholder by getting a muchilika for an enhancement from the ryot to bind the ryot to that enhanced rate until the landholder has been forced to agree to a fresh patta. The argument that Section 52 (3) will have no effect if the tenant is entitled in a suit for rent to repudiate the patta which he has accepted, seems to me to have little force. The effect of Section 52 (3) is to enable the landholder to rely on a previously accepted patta for the purpose of instituting summary proceedings, even when there has been no actual exchange of patta and muchilika for the current year. It is certainly open to a ryot who has accepted a patta to file a suit u/s 112 of the Act contesting the legality of the sale for rent as stipulated in the patta on the ground that it represents an enhancement. Vide *Raghunatha Desikachariar Vs. Rangaswami Pillai*, And I have held in a case somewhat similar to the present that when an inamdar holding the melwaram, right in a portion of a permanently settled estate, sues his tenant u/s 77 of the Estates Land Act for rent on the basis of a kadapa which represents an unlawful enhancement, the Court is obliged to give a decree for rent, not on the basis of the unlawful contract, but on the basis of the proper rent determined according to the principles laid down in the Act (Vide *Ramayya v. Satyanarayana Jagapathi Raju* (1939) M.W.N. 903). A contract for an unlawful enhancement cannot be enforced by means of a suit for rent under the Madras Estates Land Act. Equally it seems to me, must it be impossible for a landholder in proceedings u/s 15 of Act IV of 1938 to insist on the ryot depositing rent at a rate which represents an unlawful enhancement. The Court dealing with a deposit u/s 15 must necessarily find out what is the correct rate of rent and in deciding what is the correct rate of rent, it must be governed by the principles laid down in the Madras Estates Land Act.

4. On the facts it seems to me that the materials were sufficient to support the decision of the learned Sub-Collector. There is no evidence that the rate of rent of Rs. 620 prevailed before 1923. On the other hand the tenant has produced a kadapa of 1881 showing a rate of Rs. 200, another of

1883 showing a rate of Rs. 250 and another of 1894 showing a rate of Rs. 290. He has produced receipts for 1898 showing a rate of Rs. 290 and for 1906 and 1907 a rate of Rs. 300. Ex. D is a letter of 1922 by the tenant protesting against the rate of Rs. 450, which was then successfully demanded. These materials seem to make it clear that when the Madras Estates Land Act came into force in 1908 the prevailing rate of rent was Rs. 300 and that since that date a steady process of illegal enhancement has been going on. In this view I agree with the decision of the lower Court and dismiss the civil revision petition with costs.