T. R. Bhavani Shankar Joshi vs Somasundara Moopanar on 24 April, 1962

Equivalent citations: 1965 AIR 316, 1964 SCR (2) 421, AIR 1965 SUPREME COURT 316

Author: M. Hidayatullah

Bench: M. Hidayatullah, S.K. Das, J.C. Shah

PETITIONER:
T. R. BHAVANI SHANKAR JOSHI

Vs.

RESPONDENT:
SOMASUNDARA MOOPANAR

DATE OF JUDGMENT:
24/04/1962

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
DAS, S.K.
SHAH, J.C.

CITATION:
1965 AIR 316 1964 SCR (2) 421
CITATOR INFO :
R 1968 SC1005 (6)

ACT:
Act of State-Properties of Late Ruler seized by Government-Subsequent restoration to heirs of private properties-If amount to a grant-Nature of the property-Whether "estate" Occupancy rights-Madras Estates Land Act, 1908 (Mad 1 of 1908), as amended by Madras Act 18 of 1936, s. 55.

HEADNOTE:
The property in suit belonged to what was known as the Tanjore Palace Estate. The appellant became owner of the property in 1936 by virtue of a sale on foot of a mortgage decree obtained by his father in a suit of 1926. The respondent bad been in possession of the property by virtue

of a lease deed dated July 30, 1932, and on August 13, 1936, he got a lease of the property for two years from the appellant. Under the Madras Estates Land Act, 1908, as amended by the Third Amendment Act of 1936, occupancy rights vested in a person who was in direct and actual possession of the Land on June 30, 1934. The respondent instituted a suit against the appellant for the grant of a patta in occupancy right on payment of a fair rent. The appellant pleaded that the provisions of the Act were not applicable to the property in suit on the ground, inter alia, that as it was a part of the Tanjore Palace Estate it could not be considered to be an estate within the meaning of the term in the Act. The history of the Tanjore Palace Estate showed that after the Rajah of Tanjore died in 1855, leaving no male heirs, the Government seized all his properties. Subsequently, in 1962 the private properties of the Rajah were "relinquished" and "restored" by the Government to the widows of the Rajah. The appellants contention was that the manner in which the properties reverted to the widows of the Rajah in 1862 after an act of State showed that it was not a case of a fresh grant by the Government but a restoration of the status quo ante, so that the widows enjoyed both the warams, as before.

Held, that the act of State having made no distinction between the private and public properties of the Rajah the private properties were lost by that of State leaving no right outstanding in the existing claimants. The Government order was thus a fresh grant due to the bounty

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of the Government and not because of any antecedent rights in the grantees.

The words "relinquished" or "restored" in the Government order did not have the,legal effect of reviving any such right because no rights survived the act of State. The root of title of the grantees was the Government order.

The Secretary of State in Council of India v. Kamachee Roys Saheba, (1859) 7 M. I. A. 476, Jijoyamba Bayi Saiba v. Kamkashi Bayi Saiba, (1868) 3 M. H. C. B 424, Srimant Chota Raja Saheb Moyitai v. Sundaram Ayyar, (1936) L. R. 63 I. A. 224 and Chidambaram Chettiar v. Ramaswamy Odayar, [1957] 1 M. L. J. 72, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 54 of 1952. Appeal from the judgment and decree dated March 19, 1953, of the Madras High Court in S. A. No. 1513 of 1948. F. N. Rajagopala Sastri, M. I. Khowaja and B. K. B . Naidu, for the appellant.

M. C.Setalvad, Attorney-General of India, A. V. Viswanatha Sastri, R. Gopalakrishnan., J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the respondent.

1962. April 24. The Judgment of the Court was delivered by HIDAYATULLAH, J.-In this appeal on a certificate, the appellant was the original Defendant No. 1 in a suit filed by the respondent under s. 55 of the Madras Estates Land Act, 1908, seeking a direction for the grant of a patta to him in regard to the suit land. The suit was decreed by the Revenue Divisional Officer, Kumbakonam, who fixed the rent at the rate of Rs. 1-8-0 per mah, the land being about 64 acres or 192 mahs.

This land originally belonged to what. was known as the Tanjore Palace Estate, and by a suit of 1919, it fell to the share of Ry. Sivaji Rajah Saheb of Tanjore (Palace). It came into' 'the possession and ownership of the appellant by virtue of a sale on foot of 'a mortgage decree obtained by his father in a suit of 1926. The appellant obtained :possession in 1963. While the suit was pending, the property was in the possession of four minors through their maternal uncle, who was appointed as their guardian by the District Court, West Tanjore. In 1932, the respondent took the suit property on lease from,the guardian for 3 years, by a lease deed dated July 30, 1932. Under this lease, the respondent remained in possession and enjoyment of this property till June 30, 1935, cultivating it, as-he alleged under pannai cultivation. During the execution proceedings, however, a receiver was appointed, and on May 12, 1935, the receiver granted a lease for 3 year from July 1, 1935. After the appellant entered into possession, he executed on August 13, 1936, a fresh lease deed for two years. (faslis 1346 and 1347) and till the suit, according to the respondents, he continued in uninterrupted possession and enjoyment of the property. The claim was made under the Madras Estates Land Act, 1908, as -a 'Mended by the Third Amendment Act of 1936, under 'which occupancy rights vested in a person who was in direct and actual possession of the land on June 30, 1934. The respondent, therefore, claimed the protection of the provisions of the Madras Estates Land Act, and thus to be entitled to a 'patta in occupancy right on payment of a fair rent suggesting Rs. 1-8-0 per mah as the fair rent. The appellant contended that the land in question known as Pattiswaram Thattimal Padugai was included in a revenue village, Thenam Padugai Thattimal, and was neither an entire village nor an estate or part of an estate,.and that thus the provisions of the Madras, Estates Land Act did not apply to it, because the land in question was not ryoti land. It was also averred by the appellant that the respondent was a mere farmer of revenue, that is to say, an intermediate lessee, who was not cultivating the suit land himself or in pannai or with the help of hired labour. Various other pleas were raised, but to them no reference is necessary, because the arguments in this Court were limited to the consideration of the findings on Issues 1 to 3 framed in the original suit. Those Issues were :

> ,(1) Is the village wherein the suit properties are situated an inam within the meaning of Act XVIII of 1936 ? Was it an Estate prior to the enactment of Act XVIII of 1936 or did it become an Estate under the provisions of the Act ? (2) Is the Plaintiff a mere lessee or farmer of rent or the actual cultivator of the suit lands ? (3) Is the Plaintiff a ryot entitled to occupancy rights under Act XVIII of 1936 for the reliefs claimed in the plaint ?"
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> The suit, as already stated, was decreed by the Revenue Divisional Officer. On appeal, the District Judge of West Tanjore, dismissed the appeal, but modified the rent to Rs. 4 /-per mah as the proper and equitable rate of rent. On further appeal to the High Court, the judgment and decree of the District Judge were confirmed with the

modification that the rent was determined at Rs. 7/-per mah, and Rs. 1,350/- were fixed as a lump sum. There was a cross-objection, which was also dismissed.

The question in this appeal is whether the property in suit, being a part of the Tanjore Palace Estate, can be considered to be an 'lest the meaning of the term in the Madras Estates Land Act. That it would be so if it was part of an inam was counsel for the appellant. He, however, contended that the manner in which the property reverted to the widows of the Rajah in 1862 after an act of State, did not show that the estate was freshly granted, but was restored to the widows who enjoyed both the warams, in the same way as the warams wers enjoyed before. Much of the arguments in the case, therefore, was directed to establishing that in 1862 there was a "restoration" of the status quo ante rather than a fresh grant by the British Government. It is, therefore, necessary to recount, in brief, the facts leading up to the Government Order No. 336 of 1862. These facts have been given in considerable detail by the Privy Council in The Secretary of State in Council of India v. Kamachee Boye Sahaba (1), and they are also very well-known. The Rajah of Tanjore died in October, 1855, leaving no male heir to succeed him. He left behind him a large number of widows and 'two daughters. After his death, Mr. Forbes who was the Commissioner, under authority of Government, seized the properties of the Rajah, and took them under his charge. He, however, reported to the Government that the private properties of the Rajah and others would be returned after an enquiry into any claims that might be submitted. The senior widow, Kamachee Boye Sahaba, thereupon, filed a Bill on the Enquiry Side of the Supreme Court of Madras, and obtained a decree that the seizure of the private properties was wrong. On appeal by the Secretary of State in Council of India, the Privy Council reversed the decree, and ordered the dismissal of the Bill. Thereafter,. a memorial was submitted to the Queen and Mr. Norton Senior went to England to interview the Government. As a result of his efforts, in 1862 the (1) k 1 @59) 7 M.I.A. 476..

private properties were ,'relinquished" and "restored" by the Government Order No. 336 of 1862.

Numerous cases were decided in the Madras High Court, some of which also went before the Privy Council, dealing with diverse items of the Tanjore Palace Estate. The argument which is raised in this appeal, viz., that the Government Order was not a fresh grant but only led to the restoration of the properties is not a new one, and was raised in those cases. In Jijoyiamba Bayi Saiba v. Kamakshi Bayi Saiba (1), the High Court held that the Government Order was a grant of grace and favour to persons who had forfeited all claims to the personal properties of the Rajah by the act of State and was not a revival of any antecedent rights which they might have had but for the act of State. A similar view of the grant was taken also in a Full Bench case in Sundaram Iyer v. Ramachandra Iyer (2). The Fall Bench case was concerned only with the Mokhasa Ullikadai village, and the question later arose whether the decision should be limited to that village in this estate or extended to others. Subsequently, in Abdul Rahim v. Swaminatha (3) it was held that the decision applied also to other villages, which must be regarded as part of the Inam Estate, which was granted by the Government Order. Earlier still, the decision of the Full Bench was relied upon in several cases, to which

reference has been made in Abdul Rahim v. Swaminatha (3) as also in a recent case decided by the Madras High Court and reported in Chidambaram Chettiar v, Ramaswamy Odayar (4). In the last mentioned case is to be found a list of most of the decisions under which the Order was interpreted as a fresh grant. Indeed, the Privy Council in Srimant Chota Raja Saheb Mohitai v. Sundaram Ayyar(5) referred to the Government Order as (1) (1868) 3 M.H.C.R 424. (2) (1917) I.L.R 40 Mad. 389. (3) I.L.R. [1955] Mad 744. (4) [1957] 1 M.L.J. 72. (5) (1936) L.R. 63 I.A. 224.

grant and to the recipients of the property in 1862 as the grantees. There are, however, cases in which a contrary note was struck. In Maharajah of Kolhapur v. Sundaram Iyer,(1) Spencer, J.C. J., appeared to doubt the decision of Scotland, C. J., in Jijoyiamba Bayi Saiba v. Kamakshi Bayi Saiba (2) that there was a grant of grace and favour in 1862. A similar discordant note was struck in Sundaram v. Deva Sankara (3) ; but these cases have been subsequently explained or not accepted on this point. In the judgment under appeal, the Divisional Bench has also referred to this consistent view held about the Government Order, and it must, therefore, be assumed that for nearly 100 years the Madras High Court has held the view which was first expressed by Scotland, C.J. Apart from the fact that it would not be open to us to disturb titles by reversing this long line of decisions, we are of opinion that the arguments that have now been raised are not sound.

It is contended that the act of State begun in 1856 by Mr. Forbes was not really over till 1862, and during the period, enquiries were made for the return of the private properties of the Rajah, and thus the act of State did not extinguish the original title, but it was restored without there being a fresh grant. The Government Order of 1862 was read to us to show that it was not worded as a grant but as a communique by which the decision to relinquish and restore the properties was conveyed. It is also argued that in the despatches, Mr. Forbes had himself said that enquiries would be made about the private properties of the Rajah, which would be scrupulously returned, and thus even at that time there was no intention to complete, so to 'Speak, the act of State against the private properties.

(1) (1924) I.L.R. 49 Mad. 1. (2) (1868) 3 M.H.C.R 424. (3) A.T.R. 1918 Mad. 428.

The first question to decide is whether the act of State was directed against only the raj properties or against the private properties as well. Here, the decision of the Privy Council in Kamachee, Boye Sahaba's case (1) repels the argument of the appellant completely. Kamachee Boye Sahaba filed a Bill for the return of the private properties, and the Privy Council held that as the seizure was made by the British Government acting as a Sovereign power through its delegate, the East India Company, it was an act of State, into the propriety of which the municipal courts had no jurisdiction to enquire. It pointed out that the enquiry which was to be made was not in elation to the private properties of the Rajah but in connection with certain other properties which, though belonging to third parties, were held by the Rajah. It observed, however, in respect of all the properties that were seized., as follows :

> "..... if the Company, in the exercise of their Sovereign power, have thought fit to seize the whole property of the late Rajah, private as well as public, does that circum stance give any jurisdiction over their acts to the Court at Madras ?"

and it answered that no difference was made between the private and public properties, and the Madras Supreme Court had no jurisdiction over the seizure of either. It also mentioned that the letter of Mr. Forbes, that the private properties of the Rajah would be returned after an enquiry, was wrongly construed. It pointed out (and we think quite correctly) that the distinction made in the letter between private and public properties applied not to the properties of the Rajah but to such properties which might have been seized by the officer as in the possession of, or apparently belonging the Rajah, while, in fault they belonged (1) (1859) 7 M.I.A. 476.

to or were subject to the claims of other persons. It was these claims which were to be investigated, and the Privy Council observed :

> "All claims which might be advanced to any part of the property seized, by institutions or individuals were to be carefully investigated, and all to which a claim might be substantiated would be restored to the owner."

It then concluded that whatever the meaning of the letter it showed that the Government intended to seize all the property which actually was seized, whether public or private, and the seizure as a whole was an act of State. The act of State having thus materialised against all the properties, public or private, of the Rajah, no title could be said to have remained outstanding in any one. The Privy Council pointed out also that the heirs such as there were could only look to the bounty of the British Government and had no claim or right in law. In this state of affairs, it is impossible to construe the Government Order as anything but a fresh grant. It is stated that it is not worded as a grant, because it uses, the words "relinquished" and "restored" and also it does not set out any terms or conditions on which ,the property was to be held ; nor does it give a list of the properties so granted. As regards the list of properties, it has always been felt that there must have been one, though it does not appear to have been produced in a court of law. If the properties were sorted out, it is inconceivable that the Government Order would not specify also the properties to be returned, and such a list must have accompanied it. The document in question creates,, its own conditions, and indicates the line of succession. The root of title of the family was thus the Government Order, and it has been so observed in Chidambaram Chettiar v. Ramaswamy Odayar (1).

The next question raised is that the documentary evidence produced in the case does not disclose the grant of an entire inam village. Reference in this connection is made to the Government Order, in which in addition to the villages there is a mention of certain lands. It is argued that the suit land is neither a Mokhasa village nor a part of one, that it is one of three blocks which are separated from one another by rivers and distances, that there are no residential houses in any of the three blocks, and lastly that the name of the village has changed from time to time, as is evidenced by the muchalikas of 1875, 1882 and 1904 (Exs. D-8, D-9 and D-10). The case of the respondent was that the Mokhasa village, Pattiswaram Padugai, was a whole inam village, and it was governed by Madras Estates Land Act, 1908, that the respondent was in direct and actual possession on June 30, 1934, and therefore within the protection of that Act. The case of the appellant was that Pattiswaram Padugai was not a whole inam but village was included in Thenam Padugai which was a revenue village, and since Pattiswaram Padugai was not an entire village, it was neither an estate nor a part of an estate. All the three Courts have held in favour of the respondent. The question is whether the

decision proceeds on no evidence. The evidence in this behalf is oral as well as documentary. P.W. 2 Venkatarama Ayyangar, claimed to be the karnam of Thenam and Pattiswaram Padugai for 24 years. He stated that Pattiswaram Padugai was a separate village with separate account and , was included in the Vattam of Thenam Padugai. Rajagopala Ayyanger (P.W.4) who was the in-charge (1) (1957) 1 M.L.J. 72.

karnam of Pattiswaram Paduqai, his father being the karnam, claimed knowledge of the conditions for 20 years. He stated that though Thenam Padugai, Pattiswaram Paduqai and Vellapillaiyarpettai were included in the Thenam Padugai vattam and not contiguous, there were separate accounts for each village. He proved Ex. P 19 (No. 12 account) and Ex.P-19 (a) (No. 12 part If account) relating to this village. Then, there is the revenue record, Ex. P-3, which, though not strictly a record of rights, is an official document of great value. It is described as Irrigation Memoir No. 7 Tenam Padugai Thattimal village, Kumbakoman Taluk Tanjore District. In that, it is stated as follows :

> "Teriampadugai Tattimal is an unsettled mokhasa village lying 4 miles south-west of Kumbakonan in the Cauvery Delta. It consists of three bits, the first bit lying between the Kodamurutti and the Mudikondan rivers and the second bit between the Mudikondan and the Tirumalairajan rivers and the third bit near Sundarperumalkovil Railway station. The second bit is locally known as Pattiswara m Padugai while the third as vellapilliarpettai. "The village is governed by the provisions of the Madras Estates Land Act 1 of 1908."

This document of the year 1935 shows that the three blocks together constituted a Mokhasa village of Thenam Padugai Thattimal. Mokhasa village has been defined in Wilson's Glossary as "a village or land assigned to an individual either rent-free or at a low quit rent on condition of service." This definition was accepted by the Judicial committee in Venkata Narasimha Appa Rao Bahadur v. Sobha- nadri Appa Rao Bahadur (1). Further, in the land revenue receipts, Exs. P-10, P-11, P-12 and P-22, (1) [1905] 1. I.L.R. 29 Mad. 52, 55.

and in the quit rent receipt which have been filed, the village is described as a whole village and even)he appellant in Exs. P-15 and P-9 described the Pattiswaram Thattimal Padugai as a village attached to Mokhasa Thenam padugai Vattam.

In view of this evidence, it is quite clear that the finding concurrently reached in the High Court and the two Court below is based on evidence. It was contended that this evidence is of modern times, and what is to be proved is the existence of an inam village in 1862, when the private properties of the Rajah were returned to his widows. There is no doubt that the evidence does not go to that early date, but the documents take it back to 1873, and there is nothing to show to the contrary. In this state of the evidence, we do not think that the High Court was 'in error in holding that this land is a part of an inam village, aid has been so ever since 1862. The fact that there are no houses and that the suit land is situated in three different blocks does not militate against the evidence, which has been produced on behalf of the respondent. Nor do we think that the change of name can count, if the identity of the land is properly established. It was also contended in the case in the Court of First Instance that the plaintiff was a farmer of revenue and an intermediary, because he had leased out

the lands in his turn, and further that the lands were the private lands of the appellant, in Which the respondent could not claim any occupancy rights. These two pleas appear to have been abandoned by the time the case reached the High Court, and were not pressed upon us. In our opinion, the judgment under appeal is right in all the circumstances of the case.

The appeal thus fails, and is dismissed with costs. Appeal dismissed.