Gaudi Ramamurthy & Ors vs The State Of Andhra Pradesh & Ors on 26 August, 1966

Equivalent citations: 1967 AIR 1140, 1967 SCR (1) 181, AIR 1967 SUPREME COURT 1140, 1967 (1) SCR 181 1967 2 SCJ 396, 1967 2 SCJ 396

Author: K. Subba Rao

Bench: K. Subba Rao, J.M. Shelat

PETITIONER:
GAUDI RAMAMURTHY & ORS.

Vs.

RESPONDENT:
THE STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT:
26/08/1966

BENCH:
RAO, K. SUBBA (CJ)
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RAO, K. SUBBA (CJ)
SHELAT, J.M.

CITATION:
1967 AIR 1140 1967 SCR (1) 181

ACT:
Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), s. 3(b) and Regulation XXV of 1802, s. 4-Estate vesting in Government under notification issued under Estates Abolition Act--Certain lands granted before permanent Settlement partly in lieu of services and partly for rent-Such lands whether excluded from estate under Regulation of 1802.

HEADNOTE:
The appellants and respondents 2 to 5 were owners of Jaggamapeta estate in the East Godavari District of Andhra Pradesh. The Vantari Muttah', a piece of land about 400 acres in area, was granted to their predecessor in interest in return for services as vantarlu' or 'foot set,#ants' long before the permanent settlement. After the passing of the

Madras Estates, (Abolition and Conversion into Ryotwari) Act XXVI of 1948 dispute arose whether the land formed part of the Jaggampeta estate for if it did not, the Act would not apply to it. After various stages of litigation a Division Bench of the High Court decided against the apellants. They came to this Court with special leave.

it was contended on behalf of the appellants that the said Muttah was granted to their predecessor-in-interesi-before the permanent settlement by the then Zamindar for public services subject to a payment of favourable rent, that, subsequently, the services were discontinued,but the grant was continued subject to the payment of favourable rent, that at the time of the permanent settlement the said Mutta was excluded from the assets of the Zamindari and that therefore the said Muttah. was outside the scope of the notification issued by the Government under Madras Act XXVI of 1948. On behalf of the respondent State it was urged that the grant was subject to the payment of the full asses-men,, that the said assessment was paid partly in cash and partly by personal services to the, Zamindar, that at the time of the Permanent Settlement the said Muttah was included in the assets of the Zamindari and that as it was a part of the Zamindari the Government at the time of the Inam Settlement did not take any steps to enfranchise the same.

HELD:(i) Under s. 4 of the Regulation XXV of 1802 the Government was empowered to exclude income from lakhiraj lands i.e. lands exempt from payment of public revenue and of all lands paying only favouable quit rents, from the assets of the Zamindari at the time of the Permanent Settlement. If the lands fall squarely within the mid two categories, there is a presumption that they we-re excluded from the assets of the Zamindari. But if the grant of land was subject to performance of personal services to the Zamindar or subject to the payment of favourable rents and also performance of personal services to the Zamindar, there is no such presumption. Indeed the presumption is that in such a case the income from the land was not excluded from the assets of the Zamindari. The reason for the rule is that in one case the personal service are equated with the, full assessment and in the other

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the favourable rent together with the personal services is equated with full assessment. If the Zamindar in one shape or another was getting the full assessment on the lands there was no reason why the Government would have foregone its revenue by excluding such lands from the assets of the Zamindari. [185 F]

Mahaboob Sarafarajewant Sri Raja Parthasarathy Appa Rao Bahadur Zamindari Garu v. The Secretary of State, (1913) I.L.R. 38 Mad. 620 and Secretary of State, v. Rejah Vasiredy, A.I.R. 1929 Mad. 676, referred to.

(ii) The grant in the present case was a pre-settlement grant. The land was granted to the Vantarlu subject to the

payment of favourable rent and also subject to the performance of personal services to the Zamindar. The Government either before the permanent settlement or subsequent thereto never claimed a right to resume the same. Indeed it was the Zamindar who was giving remissions to the Vantarlu Whenever their services were not required. There is a presumption that such I land was not excluded from the assets of the Zamindari and the evidence adduced in the case not only did not rebut that presumption but also to some extent supported it. The Division Bench of the High Court was therefore right in holding that the Vantari Muttah was part of the estate of the appellants and respondents 2 to 5 and was therefore, covered by the notification issued by the Government under the Estates Abolition Act, 1948. [189 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 501 of 1964. Appeal by special leave from the judgment and order- dated February 27, 1961 of the Andhra Pradesh High Court in S. p. A. No. 137 of 1959.

R. Ganapath Iyer, for the appellant.

P. Ram Reddy and T. V R. Tatachari, for respondent No. 1. The Judgment of the Court was delivered by Subba Rao, C. J. This appeal by special leave raises the question, whether the land described as "Vantari Muttah" in Talluru village was included in the assets of Jaggampetta A and D Zamindari estates, in Peddapuram taluk, East Godavari District, Andhra Pradesh, at the time of the Permanent Settlement.

The undisputed facts may be briefly narrated. The said Muttah comprises an area of 50 puttis, i.e. about 400 acres, and five tanks are situate therein. The said Muttah was granted to the predecessor-in-interest of the appellants and respondents 2 to 5 long before the Permanent Settlement in consideration of payment of Kuttubadi of a sum of Rs. 620/-. At the time of Inam Settlement, it was not enfranchised by the Government. After the Madras Estates (Abolition and Conversion into Ryotwari) Act XXV] of 1948 was passed, on September 22, 1952, by a notification issued thereunder, the Government took over the Jagganpeta Estate. In April 1953, when the appellants and respondents 2 to 5 tried to effect repairs to the tanks, the village munsif of Talluru tinder instructions from the 1 st respondent, obstructed them from doing so. Thereupon, the appellants filed O. S. No. 269 of 1953 in the Court of the District Munsif, Peddapuram, against the State of Andhra and others for a declaration that the 1st respondent, had no right to the said tanks and for an injunction restraining it and its subordinates from interfering with their rights in the said tanks. The 1st respondent resisted the suit inter alia on two grounds, namely, (i) the entire Vantari Muttah was included in the assets of the said estate of Jaggampeta at the time of the Permanent Settlement, and (ii) in any view, Linder the grant, the predecessor-in-interest of the appellants and respondents 2 to 5 was given only the land and not the tanks therein. The learned District Munsif

upheld the claim of the appellants to the said tanks and decreed the suit. On appeal, the learned Subordinate Judge Kakinada, held that the said land was included in the assets of the Zamindari at the time of the Permanent Settlement and, on that finding, he dismissed the Suit. On further appeal, Kumarayya, J. of the Andhra Pradesh High Court agreed with the learned District Munsif. But, on Letters Patent appeal, a Division Bench of the HighCourt,consisting of ChandraReddy,C.J.and ChandrasekharaSastry,J.,agreed with the learned Subordinate Judge. The result was that the Suit of the appellants was dismissed with costs throughout. Hence the present appeal.

On the pleadings, two questions arose for consideration, namely, (i) whether the Muttah was included in the assets of the Zamindari at the time of the Permanent Settlement, and

(ii) even if the said Muttah was excluded from the assets of the Zamindari, whether the original grant comprised the tanks.

The second point need not detain us, for, though Kumarayya,

1. held on the said point in favour of the appellants, the Division Bench did not express any opinion thereon, in view of its decision on the first point. As we are agreeing with the Division Bench on the first point, it is not necessary for us to express our opinion on the second point. Apropos the first point, Mr. R. Ganapathy Iyer, learned counsel for the appellants, contended that the said Muttah was granted to the prodecessor in interest of the appellants and respondents 2 to 5 long before the Permanent Settlement by the then Zamindar for public services, Subject to a payment of favourable sent, that, subsequently, the services were discontinued, but the grant was continued subject to the payment of favourable rent, that at the time of the Permanent Settlement the said Muttah was excluded from the assets of the Zamindari and that, therefore, the and Muttah was outside the scope of the notification issue by the Government under Madras Act XXVI of 1948.

Mr P. Ram Reddy, learned counsel for the 1st respondent, the State of Andhra Pradesh, argued that the grant was subject to the payment of the full I assessment, that the said assessment was paid partly in cash and partly by personal services to the Zamindar, that: at the time of the Permanent Settlement the said Muttah was included in the assets of the Zamindari and that, as it was a part of the Zamindari, the Government, even at the time of the Inam Settlement, did not take any steps to enfranchise the same.

Before we advert to the evidence, it will be convenient to notice briefly, at this stage, the relevant law on the subject.

Under s. 3(b) of the Estates Abolition Act, the entire estate, including inter alia the tanks, shall stand transferred to the Government and vest in it free of all encumbrances. This section would be attracted only if the suit land was part of an estate as defined under the Act. It cannot be disputed that if the land was included in the assets of the estate at the time of the Permanent Settlement, it would be a part of the estate. Section 4 of Regulation XXV of 1802 enabled the Government to exclude from the said assets certain items. Under the relevant part of the said section, the Government was empowered to exclude from the assets of the Zamindari at the time of the

Permanent Settlement "lands exempt from the payment of public revenue and of all other lands paying only favourable quit rents". Besides these two categories of grants of lands, namely, lands exempt from payment of public revenue and lands paying only favourable quit rents, there was another category of lands which were granted subject to the payment of favourable quit rents and also subject to the performance of certain services. The said services might be public or private services, i.e., services to the community or services to the grantor. The third category of land was the subject matter of decision in Mahaboob Sarafarajawant Sri Raja Parthasarathy Appa Rao Bahadur Zamindari Garu v. The Secretary of State(1). Where lands in a zamindari were pre-settlement inams granted on condition of rendering personal service to the zamindar and paying a favourable quit rent, the Madras High Court held that as the grant was for services purely personal to the zamindar, prima facie the inams formed part of the assets of the zamindari. The reason for this rule of presumption was stated by Sankaran Nair, J. thus :

> According to these cases, therefore, when lands were held on condition that the holders were to render certain services which were purely personal to the Zamindar and in which the Government were not interested, i.e., when such services had nothing to do with police or magisterial duties, or did not concern the community or the villagers, (1) (1913) I.L.R. Madras 620, 632.

then the Government were entitled to include in the zamindari assets for setting the peshkash the income from the lands allowed in lieu of such services which were not allowed for in the settlement; there is therefore no presumption they did not do so or treated the land as free from payment."

If the services were purely personal to the zamindari, there was no reason why the Government would not have included the land in the assets of the zamindari for the purpose for fixing the peshkash. The same result was arrived at by a different process. Under s. 4 of Regulation XXV of 1802, lands paying only favourable quit rents might be excluded from the assets of the zamindari. If the grantee paid part of the assessment in cash and part in the shape of personal services to the zamindari, it cannot be said that he held the lands paying only favourable quit rent to the zamindar. The aspect was brought out with clarity by Venkatasubba Rao, J., in Secretary of State v. Rajah Vasireddy(1). Therein, the learned Judge said thus :

> "In the case of personal service inams, was there any reason at the time of the permanent settlement for treating them as "lands exempt from the payment of public revenue ?" The zamindar was receiving income from such lands, though not of course in the shape of cash-rent but in the shape of services; for the rendering of services was one mode of paying the rent. It was reasonable therefore, to treat them at the settlement as revenue paying lands."

The legal position may therefore put thus; Under s. 4 of Regulation XXV of 1802 the Government was empowered to exclude income from lakhiraj lands, i.e., lands exempt from payment of public revenue and of all lands paying only favourable quit rents, from the assets of the zamindari at the time of the permanent settlement. If the lands fall squarely within the said two categories, there is a presumption that they were excluded from the asse's of the zamindari. But if the grant of land was

subject to performance of personal services to the zamindar or subject to the payment of favourable rents and also performance of personal service to the zamindar, there is no such presumption. Indeed, the presumption is that in such a case the income from the land was not excluded from the assets of the zamindari. The reason for the rule is that in one case the personal services are equated with the full assessment and in the other the favourable rent together with the personal services is equated with full assessment. If the zamindar in one shape or another was getting the full assessment on the lands, there was no reason why the Government would have fore-

(1) A.I.R. 1929 Madras 676, 682.

Sup.CI/66-13 gone its revenue by excluding such lands from the assets of the zamindari.

With this background, let us look at the documentary evidence adduced in the case. The relevant grant is not produced. The permanent settlement accounts are not before us. The sanad is not placed on the evidence. Indeed, no document of a date prior to the permanent settlement is exhibited. The question falls to be decided only on the basis of the documents that came into existence subsequent to the permanent settlement.

Ex.A-3 is a Kaifat dated April 22,1818 pertaining to 'manyams' in the village of Jaggampadu. The relevant part of the document reads :

> "Thimmaraju Maharajulungaru got debited in the accounts of the said village, and granted towards maintenance of Malireddy Gopalu for his service.
>
> He (Raja) fixed three hundred and fifty varahas and continued it so in the same manner receiving service from him.
>
> Afterwards Ammannagaru settled that cash has to be paid to the aforesaid 'diwanam' (estate) and that the remaining shall be enjoyed as long as the service is done to the abovementioned people. In that manner it was enjoyed till last year. For the current year it was done as 'Amani' (Government supervision)."

This document shows that the grantee and his heirs were to enjoy the land so long as service was done to the Raja. The expression "abovementioned people" can only refer to the Raja'. The service, therefore, was only personal service to the Raja.

Ex.A-4 is an order of the District Collector of Rajahmundry to the Estate Amin or Jaggampeta. This letter is dated September 5, 1829. This document shows that the agent of the Raja complained to the Collector that the Vantarlu of Thalluri village were granted lands assessed to a kist of Rs. 2140, that for their service the late Raja granted remission of Rs. 620, that they were paying every year the balance amount to the Raja, that after the death of the late Raja they did not present themselves to the minor Raja but were doing service to some other zamindar and that, therefore, an order might be issued directing them to pay to the then Raja the entire assessment. On the basis of that request, the Collector directed the Amin to make the necessary enquiries. This document clearly shows that

the Zamindar's agent asserted as early as 1928 that the Vantarlu were given remis-

sion by the zamindar only for doing personal services to him. The complaint made by the agent that the Vantarlu, instead of doing services to the minor Raja and attending on him, were doing services to another zamindar is a clear indication that the services mentioned in that order were the personal services to the Raja. Reliance was placed on the statement in the said order "did not even give a reply to the message sent to them during the time of the dacoities and disturbances occurred recently, asking them to be present before him" and contended that the services mentioned therein were the services for the purpose of putting down dacoities and disturbances, which were services to the community. The said statement only describes when the notice was sent and not the nature of the services. Even if it described the nature of the services, their personal attendance on the Raja during the troubled times could not make them any the less personal services to him. It was also said that the fact that the Collector's interference was sought was indicative of the public nature of the services. The Collector in those days was a person of power and prestige in a district and there was nothing unusual in a zamindar seeking his help in the matter of collecting his dues from recalcitrant serviceholders. Ex. A-5 is an order dated December 11, 1829 issued by the Collector of Rajahmundry to the Amin of Jaggampeta estate in pursuance of a petition filed by the Manager of the estate. Assertions similar to those found in Ex. A-4 were made by the Manager of the Estate in the petition filed by him to the Collector which is referred to in Ex. A-5. Ex. A-7 is a petition dated April 24, 1830 filed by the Vantarlu of Thalluru village to the Enquiry Collector, Rajahmundry. In.. that petition it was admitted that the Raja granted a land to them assessed to a kist of 310 varahas for their living, that they were doing services to the Samastanam, that after the death of the Raja, his widow told them that she would adopt a boy and that during his minority their services were not required but in view of their past services to her ancestors she would allow them to enjoy the land only on payment of half the assessment. After narrating all the subsequent events, the petitioners went on to say :

> "From the time when Lakshminarasayya got the 'nimebadi' done in that manner, we the sharers by obtaining the goodwill of Sri Raja Vatchavayi Venkatapathigaru, got the present and were paying 155 varahs to the estate and were in enjoyment of 50 putties of land assessed to a kist of Rs. 3101- as 'vasathi'. This petition also supports the case of the Government that the Vantarlu were doing personal services to the zamindar and that it was the zamindar who gave a remission of assessment in lieu of their services. The fact that Lakshminarasayya dispensed with the services of the Vantarlu during the minority of the adopted son shows that the services were only personal to the zamindar, for, if they were public services, the fact that the zamindar was a minor would be irrelevant. The learned counsel for the appellants contended on the basis of this document that whatever might be the conditions of the grant at the time of its origin before the permanent settlement, the zamindar put an end to the services and confirmed the grant subject to the payment of favourable quit rent and, therefore, the grant squarely fell within the scope of s. 4. of the said Regulation (XXV of 1802). But this document contains only an assertion on the part of the Vantarlu : and even if that assertion be true, it would only show that Lakshminarasayya did not dispense with the services for good but only exempted the

Vantarlu from doing the services till the minor zamindar attained majority. Ex. A-16 dated November 9, 1831, Ex. A-17 dated February 27, 1832 and Ex. A-18 dated March 8, 1833 are similar orders issued by the Collector to the Amin of Jaggampeta. They contain recitals similar to those contained in Exs. A- 3, A-4 and A-5.

Ex. A-10 is an order dated July 7, 1831 issued by the Collector to the Amin of Jaggampeta. Therein, when the Manager of the estate resumed the land and gave it to another on the ground that the Vantarlu were not paying the assessments, the Collector directed that they should be put back in possession of the said land. But, in doing so, the Collector did not say that the Zamindar had no right to resume the land but only observed that it did not do any credit to the estate to dispossess Muttadars of the land and grant it to some one else. This document does not throw much light on the question raised before us. Lastly, we have the fact that the Government did not take any steps to enfranchise the land. For the default of the Government, no doubt the appellants cannot be made to suffer. But that circumstance probablises the contention of the Government that the Muttah was not included in the assets of the zamindari, for, if included it is not likely that the Government would not have enfranchised it and imposed assessment thereon.

Strong reliance was placed on the expressions "Vantarlu" and "manyam" found in some of the documents and an argument was made that the said expressions indicated that the services were public services. The expression "manyam" is found in Ex.A-3. In Wilson's Glossary "manyam" is defined thus :

"Land in the south of India, held either at a low assessment, or altogether free, in consideration of services done to the state or community, as in the case of the officers.

and servants of a village..... the term is also laxly applied to any free grant or perquisite held in hereditary right by members of a village community."

The expression "manyam" does not, therefore, necessarily mean a grant for public services. It is also used in a loose sense to indicate an inam. That apart, the word "manyam" is only found in a Kaifiat of 1818 and in no other ducument it finds a place. Be that as it may, such an ambiguous expression in a solitary document which came into existence in 1818 cannot outweigh the other evidence which we have considered in detail. Nor does the expression "Vantarlu" indicate public servants. It means "foot- servants"; it may also be used to denote a sepoy. Whatever may be its meaning, the name is not decisive of the nature of the service. A foot-servant or a sepoy could certainly do personal service to a zamindar : he might look after his safety.

The following facts emerge from a consideration of the docu- mentary evidence. The grant was a pre-settlement grant. The land was granted to the Vantarlu subject to the payment of favourable rent and also subject to the performance of personal services to the zamindar. The Government, either before the permanent settlement or subsequent thereto, never claimed a right to resume the

same. Indeed, it was the zamindar who was giving remissions to the Vantarlu whenever their services were not required. There is a presumption that such a land was not excluded from the assets of the zamindari and the evidence adduced in the case not only does not rebut that presumption but also, to some extent, supports it. We, therefore, agree with the Division Bench of the High Court holding that the Vantari Muttah of the appellants was part of the Jaggampeta estate and was, therefore, covered by the notification issued by the Government under the Estates Abolition Act, 1948. In the result, the appeal fails and is dismissed with costs of the first respondent.

G.C. Appeal dismissed.