

The State Of Madras Represented By The ... vs Karumuthu Thiagarajan Chettiar on 15 November, 1963

Equivalent citations: AIR1965SC118

Author: J.C. Shah

Bench: A.K. Sarkar, J.C. Shah, Raghubar Dayal

JUDGMENT

J.C. Shah, J.

1. The respondent as purchaser of certain Inam lands in village Siruvengai-Peruvengai filed a suit disputing the power of the State of Madras to issue notifications in respect of that village under Act 30 of 1947 as the village of Siruvengai-Peruvengani was not an estate as defined in Clause (d) Sub-section (2) of Section 3 of the Madras Estates Land Act, 1908, that is, it was not an "Inam village of which the grant had been made, confirmed or recognized by the Government." It is conceded that the notification could not issue if the respondent's contention about the village was right. Now, it is well settled and not in question that except in the cases covered by the explanations in Clause (d) the Inam village referred to in this definition must be a whole village, that is, the whole village must have been granted as Inam. No question arises in the present case as to the application of the explanations.

2. The respondent advanced three contentions in support of his case that Siruvengai-Peruvengai was not an estate within Section 3 (2)(d). He first said that Siruvengai-Peruvengai was not a whole village but was a part of the village of Tirukkalapatti. Then he said that the grant of the Inam had not been to a single person but there were thirty-two different grants to thirty-two persons so that there is not one grant of the village of Siruvengai-Peruvengai. Lastly, he said that what had been confirmed by the Inam Commissioner was a grant of half of the village and not of the whole village. The trial Court rejected all these contentions and dismissed the suit. The High Court of Madras on appeal agreed with trial Court on the second, contention but reversed its decision accepting the first and third contentions advanced by the respondent. It is against this judgment of the High Court that the State of Madras has come in appeal to this Court.

3. In this Court the appellant State contended that the High Court's view on the first and third contentions mentioned above was incorrect. We think it unnecessary to consider the first for it seems to us that the third contention of the respondent is right, that is, what was confirmed by the Government was not the grant of an Inam of the village of Siruvengai-Peruvengai assuming it to be a whole village, but of half the area of it. If this is correct then, of course, the appeal must fail.

4. It appears from the Inam Fair Register that an Inam had been granted of certain lands in village Siruvengai-Peruvengai by one of the Pandya Kings to certain Brahmins for subsistence and that one half of the village had been in the possession of the zamindar of Shivganga within whose zamindari it was situate, for about fifty years prior to the Inam settlement which was in 1865 and the zamindar claimed to hold it not under any Inam right but as part of the zamindari. It was admitted at the Inam settlement that the half had always been included in the zamindari and classed in the Jamabandi account as part of it. The other half of the village was in the possession of various persons who claimed to hold it under the Inam grant of the Pandya Kings as successors of the original grantees. These persons contended before the Inam Commissioner that the zamindar had arbitrarily resumed half of the village fifty years ago. It appears that the Inam Commissioner confirmed as Inam only that half of the village which was in the possession of the persons claiming under the Inam and fixed a quit rent of Rs. 53/- on it and also directed the issue of one title deed. No title deed was however at any time produced in these proceedings. It appears from the judgment of the High Court that the learned Government pleader conceded "that there was no confirmation of the other half of the original grant in the name of the zamindar".

5. On these facts the High Court held following *Srinivasa Ayyangar v. State of Madras* that there was no confirmation of the grant of the whole village and the village was not, therefore, an "estate" within Section 3(2) (d). We are in agreement with this view. We think that the definition when it says an "Inam village of which the grant has been. . . .confirmed. . . .by the Government" means the confirmation of the area covered by the grant. It would be difficult to imagine the confirmation of a grant without confirming the area granted, confirming the grant necessarily means confirming that a certain area had been earlier granted.

6. Counsel for the State of Madras relying upon the following observations made by Venkatarama Aiyar, J. in *Bhavanarayana v. Merugu Venkatadu* "x x x, the confirmation is of the act of making a grant, and has no relation to the extent of the properties covered by it. If the Government was satisfied that the grant was true and made by a proper person, then it was to confirm it. If not, it was to refuse to confirm. There can be no question of a grant being confirmed in part and disaffirmed in part. The Government may in confirming a grant, resume a portion of it. But that is not the same thing as disaffirming the grant in part; the very act of resumption proceeds on the recognition of a pre-existing grant", urged that the confirmation required by the definition was of the original grant, and the grant must be deemed to be confirmed in its entirety for the purpose of Section 3(2) (d) of the Madras Estates Land Act if grant of a whole village in the pre-British days be established, even if the remaining land of the village is not confirmed as Inam Land in the proceedings before the Inam Commissioner.

7. An Inam village is an "estate" within the meaning of Section 3 (2) (d) of the Madras Estates Land Act if the grant was made, Confirmed or recognised by the Government, notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors-in-title of the grantee or grantees. In the present case the grant was not made by the British Government, it was a grant confirmed or recognised by that Government. Confirmation of the grant of a named village, is within Section 3(2) (d) if some lands had previous to the grant been alienated by the proprietor, and he was by virtue of the alienation incompetent to convey the entire

area of the village. That is made explicit by the Explanation which was added by the Madras Estates Land (Amendment) Act, II of 1945, But the enactment of the Explanation has not obviated the disputes which arose in cases in which the Inam Commissioner had issued more title deeds than one in respect of lands in a village granted in Inam. Two classes of cases arose :

(1) cases in which after the grant the grantee had alienated the Inam Land and in the course of enfranchisement proceedings the entire area of the Land granted was confirmed but separate title deeds were issued in favour of persons in possession of different plots, and (2) those in which confirmation made by the Inam Commissioner was only in Respect of part of the village originally granted, the rest not having been confirmed, for some reason such as resumption etc.

8. In *Viswanadham Bros. Guntur v. Subbaiya* AIR 1945 Mad 378 there was after the original grant of an entire village to a person as a Bhatavarthi Shrotriam Inam, but prior to the Inam Settlement, a sub-grant made by the grantee of some portion of the Inam and at the time of settlement the Inam Commissioner confirmed the minor Inam separately along with the Confirmation of the rest of the Inam. *Kuppuswami Aiyar, J.* held that there was no confirmation of the grant of the Inam village. The principle of this case was followed in *Achyuta Ramayya v. Akkayya* (1946) 2 Mad LJ (NRC) 19 *Kankalata Ghanayya v. Hari Lakshmi* 61 Mad LW (Journal) 91 and *Somasundaram v. State of Madras* . These were cases which belonged to class (1). fell into the second class. After the grant of the entire village, the grantor resumed 1/16th share in the village before the permanent settlement, and the Inam Commissioner confirmed the remaining 15/16th share. In holding that the confirmation was not of the entire village--which obviously it was not--the Court relied upon the principle of *Vishvanadham Bros. case* AIR 1945 Mad 378.

9. The principle of the first class of cases was sought to be extended to cases in which the Inam Commissioner issued two or more title deeds--one in respect of the named village granted and the other in respect of the grant made before the, named village was granted. The validity of that extension was challenged before a special Bench : . The facts in that case were simple. After granting certain lands by three Bhatvrithi Inams, the proprietor granted the remaining lands as a named village. The Inam Commissioner issued one title deed in respect of the named village of Cherichintala, and separate title deeds in respect of the three Bhatvrithi Inams. It was contended that the lands in the village were not comprised in an estate, because there was no Inam village of which the grant was confirmed by the Government within the meaning of Section 3(2) (d) of the Madras Estates Land Act. *Govinda Menon, J.* in dealing with this contention observed :

"The crucial factor is that the Inam Commissioner should recognise or confirm the entire area of the original grant as an inam though the result of such confirmation might be the grant of different title deeds separately to different individuals. It is not multiplicity of title deeds that matters; but it is the fact that the entire area originally granted retains its character as an inam."

In so observing *Govinda Menon, J.* stated that the Court was inclined to agree with the view expressed by *Subba Rao, J.* in , and the following formulae devised by the learned Judge :

"First find out whether original grant was of the whole village. If it is established the next question is whether the confirmation or recognition was of the entire grant or a part of the grant. If the entire grant was confirmed or recognised the process of confirmation or recognition or the fact that different title deeds' were issued or the grant was recognised by separate acts should not matter, for in either case the original grant which was of the entire village should be confirmed or recognised by the Government."

10. It needs to be emphasized that the Court was not called upon in Bhavnarayana's case to deal with a case in which the Inam Commissioner having held that there was a grant of the whole village had confirmed only a part of the village granted. Basheer Ahmedi Sayeed, J. observed that it being conceded at the Bar that what was originally granted had been confirmed by the Inam Commissioner and the requirements of Section 3(2) (d) of the Madras Estates Land Act in regard to confirmation or recognition by the Government had been satisfied, there was no point in the contention that the entire village as such had not been confirmed or recognised by the Government when the title deed, was granted.

11. Venkatarama Aiyar, J. proceeded to enter upon an exhaustive review of the case law and made the observations which are relied upon by the State of Madras. He emphasized that the confirmation is of the act of making a grant and has no relation to the extent of the properties covered by it. That statement is only partially true : as pointed out by Govinda Menon, J. if the totality of the grant is confirmed by the issue even of separate title deeds, the original grant would be deemed confirmed. But the whole grant must be confirmed by one or more title deeds. Venkatarama Aiyar, J. then observed that if this Government was satisfied that the grant was true and made by the proper person, then it was to confirm it, and that there could be no question of a grant being confirmed in part and disaffirmed in part. If this observation (which was for the purpose of deciding the case wholly unnecessary) is intended to convey that in ascertaining whether the Inam village of which the grant has been confirmed is an estate, regard must be had to what was granted by the original conveyance and all subsequent dealings by the grantor or by the confirming authority must be ignored, with respect, the observation cannot be accepted as correct. There is nothing to which our attention has been invited in the provisions of the relevant regulations and the rules framed by the Government which prevented the Inam Commissioner from declining to recognise the title of holders of Inam land in part and recognising the title to the rest. The exercise of the right of confirmation was an incident of sovereignty and in the absence of an obligation imposed by statute, the Inam Commissioner as a representative of the sovereign authority was not compelled to recognise the rights of all persons in possession of land which, was originally granted in Inam. By confirming the grant of a part of the area of the village in favour of some persons, the Commissioner could not be assumed to have confirmed the entire grant. By recognising the title of a holder of land forming part of a village originally granted in Inam, the Inam Commissioner undoubtedly recognised his title derived from the original grantee, but thereby he did not confirm the grant of the village. The confirmation of the grant of the village takes place only when the entirety of the grant is recognised either in a single individual or a group of individuals.

12. The enquiry before the Inam Commissioner involved at least two distinct steps :

(i) Enquiry as to what was the original grant; and

(ii) What area should be confirmed or recognised in favour of a claimant. In holding an enquiry into the first step, the Inam Commissioner could not be seeking to confirm or recognise the grant. The Commissioner was thereby laying a foundation for making the order of confirmation or recognition. In assuming that a conclusion on the first automatically resulted in confirmation of the grant the learned Judge obliterated the distinction between the two. In our view the formula devised by Subba Rao, J. in Somasundaram's case is substantially correct.

13. Nistala Seshayya Bhukta v. Vasu Bageyya on which reliance was placed by counsel for the State of Madras really fell under explanation (3) in Section 3 (2) (d) and with that explanation we are not concerned in the present appeal. That was a case where a part of the original pre-British grant of the whole village had been resumed by the British Government and what was confirmed was the rest of the grant. It was found that by the time of the Inam enquiry the village minus what was resumed, was understood to be the Inam village and that was confirmed. It was no doubt also held that as the entire area that was available for confirmation was confirmed, the case came within Clause (b) of Section 3 (2). This is not the case before us for here there was nothing to prevent the Inam Commissioner from confirming as part of the original grant, the lands in the possession of zamindar of Shivganga; the entire area of the village was available to him for confirmation. We do not think that this, case affords any assistance.

14. We must therefore hold that it has not been shown that there was any Inam grant of the village of Siruvengai-Peruvengai which had been confirmed by the Government. The lands in that part of the village which was confirmed as an Inam cannot constitute an "estate" within Section 3 (2) (d) of the Act.

15. The appeal fails and is dismissed with costs.