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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Wednesday, the Twenty-fourth day of January
One Thousand Nine Hundred and Seventy-nine.

PRESENT

The Hon'ble Mr. Justice GOKULAKRISHNAN

Civil Revision Petition No. 3616 of 1973

G. Muthu Bhattar

.. Petitioner (Appellant)

Vs.

The Authorised Officer,
Land Reforms, Madurai.

.. Respondent (Respondent)

Petition under section 83 of the Madras Act 58/61 praying the High Court to revise the order of the Court of the Principal Subordinate Judge, Madurai, dated 10th September 1974 and made in C.M.A. No. 451 of 1973 (MRI/M10/NKT, the Authorised Officer (Land Reforms), Madurai).

ORDER:

This petition coming on for hearing on Friday the twentieth day of October 1978, Friday the tenth day of November 1978, Monday the twentieth day of November 1978, Friday the fifth day of January 1979 and this day upon perusing the petitions, the orders of the lower court and the records in the case and upon hearing the arguments of Messrs. V. Ratnam and K. Srinivasan, Advocates for the petitioner and Mr. K. Govindarajan for the Additional Government Pleader on behalf of the respondent, the Court made the following order:-

One Muthu Bhattar has filed this revision petition under section 83 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Act 58 of 1961) hereinafter referred to as the Ceiling Act in this Judgment) questioning the validity of the order passed by the Authorised Officer (Land Reforms), Madurai, as Land Tribunal constituted under the Act.

nature are inalienable and cannot be sold in execution of a decree against the inamdar. In *Masummayya V. Official Receiver, Kurnool* (1942) 2 MLJ 54), the question arose whether on the adjudication of a holder of certain inam as an insolvent, the land would vest in the official receiver. The question was answered in the negative, holding that such land not merely could not be alienated but could not be transferred from the holder to the Official Receiver. In *Ramanatha Chettiar Vs. Kalidasa Kavandan* (71 MLJ 398) it was held that the mortgage of a temple service inam is opposed to public policy and is therefore, invalid. The counsel appearing for the second claimant, who claims to have acquired title as an alienee from the descendants of the original grantee, has no valid title to the acquired property and is, therefore, not entitled to claim a share in the compensation".

An extent of 44.70 acres of land included by the Authorities below in the holding of the petitioner were minor inam lands and a ryotwari patta was granted to the petitioner under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 30 of 1963. The petitioner opposed the inclusion of those lands in his holdings on the ground that he can enjoy the lands only so long as he continues to render services of sthankian and archaka. Even though patta has been granted in the name of the petitioner, he has not paid the compensation specified in the Act to enable him to become the absolute owner of the lands. Therefore, the petitioner prays that these lands cannot be included in his holding and the ceiling area calculated. The decisions referred to above clearly establish the inalienable nature of inam lands granted for rendering service. Admittedly, the lands measuring 44.70 acres are service inam lands, even though patta has been granted in favour of the petitioner herein. In as much as these 44.70 acres of lands are inalienable, they cannot be considered as lands of a person who is entitled 'to hold' the same as was provided in section 7 of the Ceiling Act. The lands of this nature held by a person cannot come under the definition of section 3(19) of the Ceiling Act, since he who is holding such service lands, can be considered neither the owner, nor a possessory mortgage, nor a tenant, nor an intermediary. The definition of owner in section 3(33) of the Ceiling Act will not also apply

interest of the holder, and of those for whom he should perform the service will be prejudiced. It seems to follow from this that if the lands are to go out the control of an official such as the official receiver in this case it must be remembered that the official receiver is a Hindu while the insolvent is a mahamedan the performance of the services must enviously be in peril. The whole trend of the authority is that these lands not only cannot be alienated but cannot be transferred from the holder to an official such as the official receiver".

In the decision reported in Gopal Naidu V. Special Tahsildar for Land Acquisition N.P. Madurai (5), a Bench of our High Court, considering a grant of land for Paricharakam service, the conclusiveness or otherwise of an admission by the inamdar describing himself as melwaramdar and the alienability of land hold:-

"The second claimant, appellatant in Appl. 769 of 1967 is the alience of both melwaram and Kudiwaram regarding a portion of the acquired property. It is on that basis that he claims a portion of the compensation. The inam was personal and was inalienable, as it was granted for the performance of paricharakam service. The court below failed to consider the

(5) 87 Law Weekly 67

contention urged on behalf of the Devasthanam that the grant being personal for the performance of paricharakam service in the temple, it was of inalienable and that the alience does not get any title. That a personal service inam is inalienable is well settled. In Anjaneyalu V. Venugopal Rice Mill (45 Mad. 620), it was held that a personal inam for public service is not a property that is liable to attachment under section 60 Cr.P.C. It is pointed out that where the land is personal inam for public services. S. 6(h) of the Transfer of Property Act prohibits transfer of such property as it is opposed to public policy and the transfer cannot cover any title. In Ramakrishnamma V. Venkatasubbiah (AIR 1935 Mad 252), it was held that the land burdened with the performance of a service of a public nature is inalienable being opposed to public policy and that Deshabandam inams being burdened with a series of a public

The next decision cited by Mr. Ratnam is the one reported in Anjaneyalu Vs. Sri Venugopala Rice Mill Limited.

(2) which was decided by a full bench of our High Court, the judge has observed in that decisions follows:—

"In my judgment the sale of such property is opposed to the nature of the interest affected and also is contrary to public policy. The right to enjoy the property is as long as the land owner renders service in the performance of which the public have an interest. If the inamdar sold the property, it is obvious that he would in all probability no longer perform the services and further it is quite opposed to the nature of his interest and duty (namely) that he should enjoy the produce of the land as salary for the public services he has to render) that he should sell it or alienate it, leaving himself without the means of subsistence and without further interest.

(2) ILR 45 Madras 620:

In the place or in the performance of the services. It is also to be observed that, if the property were sold, the purchaser would get no title of any value, for at any moment the property might revert to the zamindar or the Government, as the case may be, when the inamdar ceases to render such services. Further under order LVI(1) of the Standing Orders of the Board of Revenue, the Government can resume possession of a charitable or religious inam immediately on alienation". The next decision cited by the learned counsel is the one reported in Ramanathan Chettiar Rao J. has stated V. Kalidasa Kavandan, wherein Venkataraman Rao J. has stated.

"A mortgage of a temple inam land is invalid as opposed to public policy at any rate where the mortgage does not provide for payment to the institution or in support of the service, a sum not less than the net assessment of the land" and contemplated by Standing Order No.54 Cl(2) of the Board of Revenue".

In the decision reported in Masummayya V. Official Receiver, Kurnool (4) a Division Bench of our High Court has stated thus:

"The learned judge also in 45 Mad 620 (Anjaneyalu (3) 71 MLJ 398 (4) AIR 1943 Wed. 72V. Sri Venugopal Rice Mills Limited have indicated their view that if the lands are alienated the

On the basis of the above statutory provisions it was contended that service inams lands in respect of which a ryotwari patta has been granted cannot be taken into account in calculating the ceiling area under the ceiling Act.

Mr. Ratnam has cited certain decisions to fortify his contentions. The first of such decisions is the one reported in Kandasami Charitable Society Vs. Authorised Officer, Land Reforms (1) wherein Ramanujam J has held:

"The intentions of the Legislature in defining "limited owner" is to make in only such persons who held lands with powers of alienation etc. for a duration of their life and not any life interest whatever be its character.

It is true, the will gives right of alienation, but such right of alienation is only limited to the disposal of the property for discharging the debt referred to in the Will. Such a limited power of alienation falls short of a full estate, and she had no power to deal with full estate and she had no power to deal with the corpus of the estate, except to the limited extent indicated above. Subject to the right of the testator's widow to enjoy the property during his life time, the property was vested in favour of the society even on a death of the testator, and it has become the owner of the property. Subject to the rights of enjoyment etc. granted in favour of the testators widow. The directions given by the testator under the Will in this case attracted the Principle of the decision in Lakshmana Vs. Rama Iyer (AIR 1953 SC 304) and therefore, it has to be held that the interest conferred (on) the testator's widow, is more like a limited estate known to English law than like a widow's estate".

(1) 84 Law Weekly 379

Known to Hindu Law. It has therefore, to be held this case that the widow of the testator who is entitled only to a right of enjoyment over the income of the properties and not entitled to any portion of the corpus which stands vested with the society as on the date of death of a testator, is not a limited owner as defined in the Act, and as such she cannot be held to be a person holding the land in question as contemplated in the definition to 'hold'.

Section 8(5) reads as follows:—

"In the case of a minor inam held immediately before the appointed day by an individual on condition of rendering service to a religious educational or charitable institutions, the grant of ryotwari patta under sub-section (1) or (2) shall be subject to the provisions of section 21".

Section 21(7) of Act 30 of 1963 reads as follows:—

(a) Nor as long as the service-holder renders the service, he shall be entitled to occupy permanently the lands in respect of which he is entitled to a patta under section B, subject however to the payment of the assessment fixed under section 16 or under section 16-A as the case may be in respect of such lands.

(h) If the service-holder fails to render the service, the prescribed officer shall, after such enquiry and after such notice to the service-holder as may be prescribed in this behalf, notify such failure in such manner as may be prescribed. He shall then declare that the service-holder's right to occupy permanently the land under clause (a) shall cease and determine, and the institution shall be at liberty to make such arrangement as it thinks fit for the performance of the service and shall be entitled to hold the land as its absolute property subject, however, to the payment of the assessment fixed therefor under section 16 or under section 16-A as the case may be.

Explanation I for the purposes of this action:

- (i) Service-holder includes his heirs.
- (ii) Non-performance of the service due to illness or other temporary disability shall not be deemed to be failure to render service, provided that the service holder makes alternative arrangements for rendering the service during the period such illness or of other temporary disability.

Explanation II: for the purpose of sub-section (4):

"land revenue means the ryotwari assessment including the additional assessment, water-cess and additional water-cess".

From the above said provisions, it is clear that if the service-holder fails to render the service, the institution shall be at liberty to make such arrangement, as it thinks fit for the purposes of service and shall be entitled to hold the land as its absolute property".

Section 3(16) of the Ceiling Act reads:—

"full owner" means a person entitled to the absolute proprietorship of land".

Section 3(28) of the Ceiling Act states:—

"limited owner" means any person entitled to a life estate in any land and includes persons deriving rights through him.

Explanation:—A person who has a right to enjoy the land during his life time shall be deemed to be a limited owner notwithstanding that he has power to alienate the land".

Section 3(21) of the Ceiling Act states:—

"intermediary" means any person who, not being an owner or a possessory mortgagee, has an interest in land, and is entitled, by reason of such interest, to possession thereof, but has transferred such possession to others".

Mr. Ratham, the learned counsel for the petitioner submitted that the petitioner is neither the owner of the lands in question, nor a possessory mortgagee, nor a tenant, nor an intermediary so as to come under the definition "to hold" land under section 3(19) of the Ceiling Act. It is only for the service, he has to render, the petitioner has been granted ryotwari patta in respect of the lands in question, and hence the service is not continued or nor performed, the Hindu Religious and Charitable Endowment has power to resume the lands in question.

Section 8(2) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 30 of 1963 reads as follows:—

"Notwithstanding anything contained in sub-section (1) in the Madras Hindu Religious and Charitable Endowments Act, 1959 (Madras Act XXII of 1959) and in the Madras (Transferred territory) incorporated and Unincorporated Devaswams Act, 1959 (Madras Act XXX of 1959) the following provisions shall apply in the case of lands in an iruvaram minor inam granted for the support or maintenance of a religious institution or for the performance of a charity or service connected therewith or of any other religious charity.

B(ii) in case of any other land, the institution or the individual rendering service shall with effect on and from the appointed day, is entitled to a ryotwari patta in respect of that land".

Section 50(2) aforesaid, no doubt states that the Authorised Officer shall take into account the extent of lands for which a ryotwari patta has been granted in calculating the ceiling area. But, in my view if such lands are taken into consideration for fixing the ceiling area such act of the authority concerned must be in conformity with the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. Section 5 of the Ceiling Act deals with fixation of ceiling on land holdings. In that section, it has been specifically stated that the land held by a member has to be taken into account. Section 7 of the Ceiling Act states—

"On and from the date of the commencement of this Act no person shall, except as otherwise provided in this Act, but subject to the provisions of Chapter VIII, be entitled to hold land in excess of the Ceiling area".

Section 3(19) of the Ceiling Act states:—

"to hold land" with its grammatical variations and cognate expressions means to own land as owner or to possess or to enjoy land as possessing mortgagee or as tenant or an inter-mediary or in one or more of these capacities"

Section 3(25) of the Ceiling Act reads:—

"landowner" means the owner of the land let for cultivation by a tenant and includes the heirs, assignees, legal representatives of such owner or persons deriving rights through him".

Section 3(33) of the Ceiling Act states:—

"owner" means the owner of the land.

(a). Means

- (i) any person holding land in severalty or jointly or in common under a ryotwari settlement or in any way subject to the payment of revenue direct to the Government; or
- (ii) a land holder as defined in the Madras Estates Land Act, 1908 (Madras Act I of 1908) or a ryot was defined in that Act, or
- (iii) an inamdadar not being a land owner defined as aforesaid, and

(b) includes—

- (i) full owner or limited owner, or
- (ii) the lessee of any leasehold village or his heirs, assignees, legal representatives or persons deriving rights through him".

Section 50 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 30 of 1963 reads as follows:—

1. Notwithstanding any thing contained in the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Madras Act LVIII of 1961) but subject to the provisions of sub-section (2) of the Authorised Officer shall in the fixation of the ceiling area of any person under that Act exclude any Inam land.
2. As soon as may be after the ryotwari settlement is brought into force in any land referred to in sub-section (1) and after the grant of the ryotwari patta in respect of such land to any person in accordance with the provisions of the Act, the Authorised Officer shall calculate the ceiling area of such person and in so calculating or recalculating the Authorised Officer shall taken into account the extent of the land in respect of which a ryotwari patta has been granted to such person under this Act.
3. For the purposes of the Madras Land Reforms (Fixation of Ceiling on Land) Act 1961 (Madras Act LVIII of 1961) any ryotwari patta granted under this Act shall be deemed to have taken effect on the 6th day of April 1960 and for the purposes of calculating the standard acre under that Act "Land Revenue" shall in respect of the land referred to in sub-section (1) means the ryotwari assessment payable in pursuance of the ryotwari settlement referred to in sub-section (2).

From the provision in section 50(2) stated above, it is clear that the grant of ryotwari patta to any person in accordance with the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 58 of 1961, the Authorised Officer shall calculate or recalculate the ceiling area of such person and in so calculating or recalculating the Authorised Office shall take into account the extent of the land in respect of which ryotwari patta has been granted to such person under the Tamil Nadu Minor Inams Abolition and Conversion into Ryotwari) Act 30 of 1963. Relying on this provision, the learned Additional Government Pleader contended that the Authorities below have correctly included the 44.70 acres in the holding of the petitioner.

From the above provisions, it is clear that the opportunity contemplated in section 9(2)(b) of the Ceiling Act is only in respect of cases where the party does not furnish any information under section 9 of the Act. Admittedly the petitioner has furnished information and a statement was prepared on the basis of the return filed by him under section 8(1) of the Ceiling Act. Hence, the argument of Mr. Ratnam that the failure to give opportunity to the petitioner to make his representation under section 9(2)(b) of the Ceiling Act. Fatal to the case cannot be appreciated in as much as the Draft Statement was published on the basis of the return furnished by the petitioner under section 8(1) of the Ceiling Act. In such cases, I am of the view the provisions in section 9(2)(b) of the Ceiling Act need not be invoked.

The next contention of the petitioner, which assumes importance, is with regard to the 44.70 acres of lands. These lands, according to the petitioner, were minor inam lands and a ryotwari patta was granted therefor under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 30 of 1963. The petitioner opposes the inclusion of these lands in his holding on the ground that they will neither come under the definition 'to hold' nor under the definition "Full owner" contemplated in the Act. If these lands are excluded from his holding, the petitioner will not be affected by the Act and there is no need for him to surrender any land.

Admittedly, the above said lands originally were granted as an inam for rendering service, called the "Sthanikam" and "Archaka Service". By virtue of the Tamil Nadu Minor Inams (Abolition and Conversion) into Ryotwari) Act 30 of 1963, a ryotwari patta was issued to the land owner in his private capacity with a condition of rendering service. As per section 6(17) of the Tamil Nadu Religious and Charitable Endowment Act, 1959, the items of land included under section 5 of the Act (Ceiling Act) in the draft statement constitute 'religious endowment' to the temple concerned, and the petitioner can hold and enjoy these lands only so long as he renders the prescribed services.

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 30 of 1963, in order to substantiate his contentions to the effect that the authorities below erred in not issuing a notice under section 9(2)(b) of the Act and that they have gone wrong in including minor inam lands for which ryotwari patta was granted, while calculating the surplus lands.

Mr. K. Govindarajan appearing on behalf of the Additional Government Pleader contended that no notice under section 9(2)(b) of the Act is necessary, in as much as particulars were furnished by the petitioner himself and that the Authorities below have correctly included minor inam lands for which ryotwari patta was granted in favour of the petitioner.

I have carefully gone through the relevant statutory provisions and also the orders of the authorities below. It is seen from the facts of the case that a draft statement containing the particulars of the lands held by the petitioner as on 6th April 1960 was prepared and published from the materials furnished by the petitioner under section 8(1) of the Ceiling Act and also on the materials collected from the field staff of the department. Section 9 of the Ceiling Act deals with cases where the party fails to furnish the return under section 8 or where the party furnishes incorrect or incomplete return under that section. In such cases, the Authorised Officer may by notice, require such person to furnish the return of the Additional particulars, as the case may be, within the time specified in the notice or within such further time not exceeding thirty days as the Authorised Officer may, in his discretion, allow. Section 9(2)(a) of the Ceiling Act reads as follows:-

"where any person, on whom notice under sub-section (1) has been served, fails to furnish the return or the additional particulars, as the case may be, within the time specified in that notice, or within the further time allowed by the Authorised Officer under sub-section (1) the Authorised Officer may obtain in such manner as may be prescribed the necessary information either by himself or through such agency as he thinks fit".

Section 9(2)(b) of the Ceiling Act reads as follows:-

"The Authorised Officer shall, as soon as may be after obtaining the information under clause (a) give to the person concerned a reasonable opportunity of making his representation and of adducing evidence, if any, in respect of such information and consider any such representation and evidence and pass such orders as he deems fit".

On the basis of the return furnished by the petitioner herein under section 8(1) of the Act, and on the materials collected through the field staff of the department a draft statement containing the particulars of all lands held by him as on 6th April 1960 was prepared, and it was published in supplement to Part III No.10MM of the Tamil Nadu Government Gazette dated 14th March 1973 as required in section 10(1) of the Act. The draft statement was served on the petitioner on 22nd March 1973. He filed a statement of objections to the draft statement on 19th April 1973. The petitioner was heard in person on 21st May 1973 and 2nd July 1973 and during that time he filed documents, which have been marked as Exs.P1 to P7. Arguments were heard on 24th July 1973 by the Authorised Officer, and the Authorised Officer, observing that no notice under section 9(2)(b) of the Act is necessary since the draft statement was prepared on the basis of the materials furnished by the party and the petitioner is not entitled to exclude 44.70 acres on the ground that ryotwari patta was granted under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 30 of 1963, held that the petitioner has to offer surplus lands of an extent of 20.385 L.C. standard acres and that the required lands will be selected from his holding and final statement published under section 12 of the Act. The order of the Authorised Officer further states that as regards the selection of surplus lands, a separate notice was being issued granting two week's time to specify the details of surplus lands.

Aggrieved by the order of the Authorised Officer, the petitioner herein filed C.M.A. No.451 of 73 before the Land Tribunal, Madurai. The land Tribunal confirmed the order of the Authorised Officer both on the question of issuing notice under section 9(2)(b) of the Act and also on the question of excluding lands for which ryotwari patta was granted under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 30 of 1963.

Aggrieved by the decisions of the Authorities below, the petitioner has preferred the above Civil Revision Petition.

Mr. Ratnam, the Learned Counsel appearing for the petitioner took me through the orders of the authorities below and also through the relevant provisions of the Act and the