PRIVY COUNCIL

Secretary of State

Vs.

G. Krishna Rao

P.C.A.No.41of 1944
(Lord Roche, Lord Goddard, Sir Madhavan Nair and Sir John Beaumont JJ.)

26.06.1945

JUDGMENT

LORD GODDARD J.

1. The action out of which this appeal arises was brought by the respondent in the Court of the Subordinate Judge, Coimbatore, for an injunction restraining the Government of the Province of Madras from levying water cess from the plaintiff or his ryots in respect of a jaghir consisting of seven shotriem villages in the Coimbatore taluk. The learned Subordinate Judge dismissed the action, and his judgment was affirmed by the learned District Judge of Coimbatore. His judgment was reversed by the High Court of Madras, which granted the injunction on 28th July 1942, and against that judgment this appeal is brought. In this judgment, which was delivered by Somayya J., with whom Abdur Rahman J., concurred, the High Court said that the only question they had to decide was whether under the grant in question all the rights which the Government possessed (that is all the rights in the lands in question) had passed to the grantee and with this their Lordships agree. The appellant contends that all that was granted to the plaintiff's ancestor was the melvaram, or right to the revenue, from the lands, while the respondent's contention is that the grant carried not only the melvaram but also the proprietary interest in the land itself, and in the latter case there is no question but that water cess cannot be claimed by the Government.

2. It is not in dispute that the villages were originally granted as a shotriem inam to the respondent's great-grandfather Govinda Rao, as a reward for his services as Head Sarishtadar of the district. The grant itself could not be found, and indeed it seems that no formal cowle was ever issued. It appears that it had been the original intention of Government to grant the shotriem for three lives, but as Govinda Rao died before any

cowle was issued it was confirmed for two lives in favour of Govinda's son Krishna Rao, the respondent's grandfather. The evidence begins with a letter (Ex. 1) from the Secretary of the Revenue Department to the Chief Secretary of Government dated 8th December 1825, transmitting a list of the villages selected by Govinda as a shotriem. The letter stated the aggregate survey value of the villages, not, it will be observed, the revenue derived therefrom, and concluded "the extent and value of these villages being moderate the Board beg leave to recommend that they be granted as a shrotriem on the usual conditions." The Secretary to the Government replied saying that the grant of the villages on shotriem tenure was approved and asking for the preparation and submission of the requisite deed so that it might be executed. On 22nd December 1825, the Secretary to the Board of Revenue wrote to the Principal Collector, Coimbatore, forwarding a copy of a draft of a cowle for jaghirs and asking him to prepare a cowle accordingly for the grant to Govinda Rao. Then, on 26th April 1832, the Secretary of the Board of Revenue informed the Chief Secretary that shortly before the death of Govinda Rao and at his request he had put his adopted son and next heir, Krishna Rao, in possession of the villages, and stating that the board believed that no cowle was issued to Govinda Rao but that it was to be gathered from the correspondence that the shotriem was granted for three lives or to the grantee and his next two heirs. The next document in order of date consists of entries in the register of inam in one of the shotriem villages dated 6th February 1864. The general class to which the inam belongs is stated to be "shotriem village"; it is set out that the shotriem being granted by the British Government is to be confirmed and that the present holder is willing to commute his present tenure into freehold by paying quit-rent. Then it is stated that the assessment of all the villages comprised in the grant including the value of the waste land is Rs. 7000 and states how the value is calculated. On 6th May 1864, a title deed was granted to Krishna Rao by the Inam Commissioner. The deed is in these terms :

Coimbatore (Seal-Inam commission-Madras.)

No. 559. Title deed granted to Krishna Rao.

1. On behalf of the Governor-in-Council of Madras, I acknowledge your title to the shrotriem village of Maileripalayam and six other villages as per 4th side - taluk of Coimbatore, district of Coimbatore claimed to be of acres 8,680.98 (eight thousand six hundred and eighty) of dry land, and acres 12.89 of wet land and (one hundred and thirty) 130.99 acres of garden land besides poramboke.

2. This inam is subject to a jodi or quit-rent of Rs. 10 per annum, and is confirmed for two lives only, but it is not otherwise transferable; and on the

expiration of the limited term above- mentioned it will lapse to the State.

3. On your agreeing to pay an annual quit-rent of Rs. 1,182 (one thousand one hundred and eighty-two rupees), inclusive of the jodi already charged on the land as above stated, your inam tenure will be converted into freehold; in which case the land will be your own absolute property, to hold or dispose of as you think proper, subject only to the payment of the above- mentioned quit-rent.

4. If you should desire to commute the quit-rent for the payment of a sum of money, once for all, equal to (20) twenty years' purchase of the quit-rent, you will be at liberty to do so.

3. The next document in order of date is Ex. D which is headed "Revenue Board's proceedings dated 13th October 1887." How this document came into existence is somewhat obscure, but taken together with Ex. C, which is dated 29th May 1913, the position seems to have been this. In 1887, the Government were desirous of acquiring some of the shotriem lands. There was an award by the District Judge of a sum by way of purchase price for some of the lands which was paid on 29th March 1884. With regard to 233 acres, the amount offered by the Government was refused and that land was accordingly not bought but was ordered to be kept as an enclosure within the reserve of the forest. But in 1912 the Jaghirdars themselves proposed an exchange of these 233 acres for other land in the neighbourhood and to this the Government agreed. The document Ex. D is a copy of the Inam claims register and the importance of it is that it shows that the Jaghirdars' claim to proprietary rights over the village was admitted to the extent of 1273 acres and to 233 acres portion of 210 bullahs, though to the remainder of the 210 bullahs title was not admitted. Then when the suggestion for an exchange of these 233 acres was made the Jaghirdars expressly claimed melvaram and proprietary rights over them and Ex. C shows that on 29th May 1913, this claim was admitted and the exchange was effected, 240 acres being awarded to the claimants, as they were called, on the same tenure as the block surrendered.

4. These are all the documents put in evidence relating to the land in question and no oral evidence was given which threw any light on the nature of the original grant. Before the Subordinate Judge, however, the Government Pleader produced, apparently without objection, a document stated by him to be a copy or draft of a cowle in use about the time of the original grant; and which he asserted showed the conditions on which such grants were made. If there had been evidence that this grant had been made on the conditions appearing in this document there would be no doubt that the original grant was of the right to melvaram only and no proprietary interest in the land itself was given. But no evidence was given as to this draft. Had objection been made,

to its being looked at, at all in their Lordships' opinion the objection ought to have prevailed. In any case it could only have been looked at for what it was worth and it appears from the judgment of the District Judge that the plaintiff did object that no such deed was ever granted to his predecessor. In fact it is clear that no deed at all was ever executed at the time of the original grant. Both the learned Subordinate and the District Judges paid great attention to this draft and indeed really founded their judgments upon it holding that it showed what were "the usual conditions" referred to in the letter of 8th December 1896. But in their Lordships' opinion the document has no evidential value whatever. Assuming as they do that it was a genuine document obtained from a Government office, there is nothing to show that the conditions set out in it were, if usual, the only conditions which were usual or used, and certainly nothing to show that they applied generally or that no other forms were used. Indeed, as will appear later in this judgment, it is now established that shotriem grants sometimes carried only rights of melvaram and sometimes proprietary rights so that there must have been other forms and their Lordships agree with the High Court that this draft affords no evidence as to the terms on which the original grant was made and no conclusion or inference can be founded on or drawn from it.

5. Before turning to the main question in the case, it will be convenient to dispose of one matter raised by the appellant, namely, whether the appeal to the High Court was competent. It was argued that the whole question war one of fact and that as there had been concurrent findings by both the lower Courts a second appeal was incompetent by reason of the provisions of Sections 100 and 101, Civil Procedure Code. No submission to this effect was made in the High Court and in their Lordship's opinion there is no substance in the objection. What has to be decided is the nature of the respondent's title, which in their opinion involves a question of law. There is also the question as to whether the draft cowle upon which, as already observed, both the lower Courts largely based their judgments constituted any evidence of the conditions on which the original grant was made, and that again is a matter of law. Their Lordships have no doubt that the High Court had jurisdiction to entertain the appeal.

6. Turning now to the main questions, which are what was the nature of the original grant and what did it include, there are two matters which have been established by decision of this Board, which must be borne in mind. The first is that a grant of a shotriem inam may be either of the revenue from the land only, which is termed melvaram, or it may be of the proprietary rights, that is of the rights which the Government had in the land. The second is that if the original grant gave only the

melvaram the subsequent proceedings of the inam commission and the title deed granted by them will not change its character or vest in the inamdar a subject-matter not belonging to him *Secretary of State v. Srinivasa Chariarat* [1]. *page 67* and *Secretary of State v. Vidhya Sri Varada Thirta Swamigal, hereinafter* [2]. *referred to as the Swawigal case,*

7. In the present case as no sanad or cowle has been produced or even shown to have been executed the title deed granted by the inam commission and the extracts from the inam register referred to above are evidence, and indeed the best evidence of the true character of the grant. In the judgment of this Board, delivered by Sir George Rankin, in the 29 AIR 1942 PC 21 : ILR (1942) Kar PC 49 : ILR (1942) Mad 893 : 69 IA 22 : 200 IC 1 (PC) it was said that the Madras Act, 8 of 1869, created no presumption that the view of the inam commission was unfounded and unquestionably in many cases the inam right does comprise the proprietary rights in the soil. In that case the Board held that the title deed granted by the commission and the entries in the register were evidence of the true intent and effect of the original grant and of the right which in 1864 was being recognized and continued. It was contended by the appellant in the present case that, as in this case the grant was expressly confirmed for two lives only, the two cases are essentially different, there being no limitation for lives in the former. In their Lordships' opinion this makes no difference, as they can see no reason why a grant of the full proprietary rights should not be made either for a period of lives or without any limitation in point of time. As the inam deed shows, if granted for lives, the grantee is given the option of acquiring an unlimited interest in the subject of the grant and that was done in this case. The proceedings in 1888 and 1884 and as recently as 1913 also show that at those dates the Government recognised that the full proprietary rights were vested in the grantee, and this case is stronger in favour of the grantee than was the Swamigal case not only on this ground but also because hare the main deed included poramboke in the grant. Since the decision of this Board in what is usually called the Urlam case, **,** *Bala Surya Prasada Roy v. Secretary of State* [3] there can no longer be any question but that a grant of the proprietary interest includes the grantor's rights in tank, river, and channel poramboke, and it is unnecessary to consider what effect, if any, such a grant has on what is called communal poramboke such as burning grounds, threshing floors and the like. In their Lordships' opinion the judgment of the Madras High Court in *14 IC 261 : 24 MLJ 36, Narayanaswamy Naidu v. Secretary of Statewhere* a contrary opinion was expressed must be regarded as overruled to that extent by the Urlam case3. In the present case the High Court said:

> "There is not the slightest indication that any rights were reserved by Government except the right to collect Rs. 1,182 every year. Further the expression 'besides poramboke' was put in to indicate that not merely the lands that were then cultivated as dry, wet, or garden were granted but also all the other rights which the grantor had as is pointed out by the Judicial Committee in the Swamigal case2."

8. With this their Lordships agree as they do with the rest of the High Court's judgment. There remain two further matters which should be mentioned. An argument was addressed to the Board which was not raised before the High Court based on the provisos to Section 1 of Madras Act, 7 of 1865. By the first proviso a *zamindar, inamdar,* or any other description of land holder not holding under ryotwari settlement is by virtue of engagements with the Government entitled to irrigation free of separate charge and no cess shall be imposed for water supplied to the extent of this right and no more. It was submitted that this proviso did not apply because the lands were held under ryotwori settlement. If they were it would have been open to the Government to prove it, but no evidence whatever was given on this point and no more need be said upon it. The other matter is that their Lordships desire to emphasise, as did the High Court in their judgment, that this case is not concerned with the rights of persons other than the grantor and grantee, and the respective rights and liabilities between the inamdar and the ryots are in no way affected by this judgment. Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal dismissed.

Cases Referred.

1. 8 AIR 1921 PC 1 : 44 Mad 421: 48 IA 66 : 60 IC 230 (PC),

2. 29 AIR 1942 PC 21 : ILR (1942) Kar PC 49 : ILR (1942) Mad 893 : 69 IA 22 : 200 IC 1 (PC) p.40.)

3. 4 AIR 1917 PC 49: 40 Mad 886 : 44 IA 166 : 41 IC 98 (PC)