T. K. Lakshmana Iyer & Others

Vs

State of Madras & Others

Civil Appeals Nos. 484 and 485 of 1965

(CJI M. Hidayatullah, R. S. Bachawat, C. A. Vaidialingam, A. N. Grover, K. S. Hegde, JJ)

26.03.1968

JUDGMENT

BACHAWAT, J-.

In the village of Thenkarai in the Madurai District there is an ancient temple of Sri Thirumoolanathaswami. Inams were granted by Hindu kings for performance of services of watchman, palanquin-bearer, background music player, dancing girl, musical instrument player, mason, blacksmith-carpenter, potter, washerman connected with the temple. The inams were confirmed by the British Government. For over 80 years, the inams were in the enjoyment of alienees from inamdars. By an order passed on April 10, 1947 under s. 44-B of the Madras Hindu Religious Endowments Act, the Revenue Divisional Officer, Usilampatti resumed the inam lands and regranted them to the temple. On October 17, 1947, his order was confirmed on appeal by the District Collector. The Revenue Divisional Officer and the District Collector held that the inams comprised both melwaram and kudiwaram rights in the land. The orders were passed on notice to the alienees. The alienees instituted a suit in the Court of the Subordinate Judge, Madurai under the proviso to s. 44-B(2)(d)(ii) asking for a decree declaring that the inam grants consisted of the melwaram only. The suit was withdrawn to the Court of the District Judge, Madurai and registered as O.S. No. 3 of 1954. They instituted another suit in the Court of the Sub-ordinate Judge, Madurai, asking for a decree declaring that the order of the Collector dated October 17, 1947 was a nullity. This suit was transferred to the Court of the District Judge and registered as O.S. No. 4 of 1954. The District Judge dismissed O.S. No. 3 of 1954. He decreed O.S. No. 4 of 1954 and declared that the order resuming the inam lands was illegal and a nullity. The plaintiffs filed an appeal registered as A.S. No. 746 of 1954 in the High Court of Madras from the decree in O.S. No. 3 of 1954. The High Court dismissed the appeal. The State of Madras filed an appeal registered as A.S. No. 808 of 1954 from the decree in O.S. No. 4 of 1954. The High Court allowed the appeal and dismissed the suit with respect to all the inams except the Dasi inam. Regarding the Dasi inam, the High Court dismissed the appeal as the inam was enfranchised and could not be resumed. It is from the decree of the High Court dismissing the suits in respect of the other inams that the plaintiffs have filed these appeals after obtaining special leave.

The two courts concurrently held that the inams comprised both the kudiwaram and the melwaram. The District Judge held that the right to resume an inam could not be extinguished by adverse possession, and that, in any event, the claim of adverse possession was not established. The High Court held that assuming the right of resumption could be so extinguished, it was not established that the plaintiffs and their predecessors-in-title were in possession of the inam lands adversely to the inamdars or the Government. The District Judge held that the inams were personal inams burdened with services and the order of resumption was therefore illegal and a nullity. The High

Court reversed this finding and held that the inams were for performance of services connected with the temple and were resumable under s. 44-B. The District Judge held that s. 44-B was retrospective in operation. On this last point, the High Court did not express any opinion.

It may be noted that O.S. Nos. 3 and 4 of 1954 were tried along with O.S. Nos. 1 and 2 of 1954 and disposed of by the District Judge by a common judgment. O.S. Nos. 1 and 2 of 1954 related to inams granted for performance of puja in another temple. From the decrees passed in O.S. Nos. 1 and 2 of 1954, there were appeals to the High Court and subsequently appeals to this Court. The judgment in those appeals is reported in Roman Catholic Mission v. State of Madras [[1966] 3 S.C.R. 283.]. One of the points in all the four suits was whether s. 44-B was ultra vires the powers of the legislature. This Court held that the Provincial Legislature was competent to enact s. 44-B and the amendment to it.

On behalf of the appellants, Mr. S. T. Desai submitted that (1) the inam grants did not comprise the kudiwaram; (2) the inams were personal inams burdened with services and were not resumable under s. 44-B; (3) Section 44-B (2) was not retrospective in operation and did not authorise resumption of the inams on the ground of any alienation thereof made before 1934; (4) there was no alienation of the inams as contemplated by s. 44-B(2)(a)(i) and (5) the right of resumption of the inam lands was extinguished by adverse possession of the lands by the alienees for over 60 years.

The Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927) was passed on January 19, 1927. Section 44-B was inserted in the present Act by Madras Act XI of 1934 and was later amended by Madras Act V of 1944 And Madras Act X of 1946. This section corresponds to s. 35 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951) which repealed Act II of 1927. The material provisions of s. 44-B are in these terms :

> "44-B. (1) Any exchange, gift, sale or mortgage, and any lease for a term exceeding five years, of the whole or any portion of any inam granted for the support or maintenance of a math or temple or for the performance of a charity or service connected therewith and made, confirmed or recognised by the British Government, shall be null and void.
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> Explanation. Nothing contained in this sub-section shall affect or derogate from the rights and obligations of the landholder and tenant in respect of any land as defined in the Madras Estates Land Act, 1908.
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> (2)(a) The Collector, may on his own motion, or on the application of the trustee of the math or temple or of the Assistant Commissioner or of the Board or of any person having interest in the math or temple who has obtained the consent of such trustee, Assistant Commissioner or Board, by order, resume the whole or any part of any such inam, on one or more of the following grounds, namely :-
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> (i) that the holder of such inam or part has made an exchange, gift, sale or mortgage of the same or any portion thereof or has granted a lease of the same or any portion thereof for term exceeding five years, or
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> (ii) that the holder of such inam or part has failed to perform or make the necessary arrangements for performing, in accordance with the custom or usage of such math or temple, the charity or service for performing which the inam had been made,

confirmed or recognised by the British Government, or any part of the said charity or service, as the case may be, or

(iii) that the math or temple has ceased to exist or the charity or service in question has in any way become impossible of performance.

When passing an order under this clause, the Collector shall determine whether such inam or the inam comprising such part, as the case may be, is a grant of both the melwaram and the kudiwaram or only of the melwaram.

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(f) Where any inam or part of an inam is resumed under this section, the Collector or the District Collector, as the case may be, shall, by order, regrant such inam or part -

(i) as on endowment to the math or temple concerned, or

(ii) in case of resumption on the ground that the math or temple has ceased to exist or that the charity or service in question has in any way become impossible of performance, as an endowment to the Board, for appropriation to such religious, educational or charitable purposes not inconsistent with the objects of such math or temple, as the Board may direct."

The inam title deeds, the entries in the inam fair register prepared at the time of the confirmation of the inams by the Inams Commissioner in 1863 and the contemporaneous statement made by the inamdars are of the same pattern in respect of all the inams. It is sufficient to refer to Exs. B-4, B-5 and B-6 relating to the inam for the service of Sree Padam Thangi (palanquin-bearers). The statement, Ex. B-4, shows that in fasli 1272 corresponding to 1862-63, Veerabadra Mudali, Periasami Mudali, Andiappa Mudali were in enjoyment of the inam and rendering the service under the direction of the Paisaldars or the trustees of the temple. They made the following statement : "For taking the deities in procession round the village during the festival in the temple of Tirumulanathaswami and Akilandeswari Amman in the village of Kovil Thenkarai the aforesaid land has been granted as inam. The paisaldars appointed our ancestors and got service from them. The aforesaid manyam was in their enjoyment. Afterwards the manyam was divided and during fasli 36, it was registered in the name of myself individual No. 1 and in the names of the fathers of individual Nos. 2 and 3. They were rendering the service and enjoying manyam and in the same manner. We have been rendering the aforesaid service and enjoying the manyam." The entries in the inam fair register, Ex. B-5 show that the inam belonged to the category of Devadayam and was for the service of Sree Padam Thangi which was being then rendered, that the original grant was made to the temple before fasli 1212 corresponding to 18023, and that in 1863 the inam was being enjoyed by Verrabadra Mudali, Periasami Mudali and Andiappa Mudali. The title deed acknowledged their title to Devadayan or pagoda service inam to 11.47 acres of land held for the service of Sree Padam Thangi and confirmed the inam to them and their successors tax-free to be held without interference so long as the conditions of the grant were duly fulfilled.

Those documents show that the lands were being enjoyed by the inamdars and were granted as inams. The amount of the assessment or melwaram was very low and could not be an adequate remuneration for the services to be rendered. The plaintiffs claimed title to the lands under a grant from the inamdars on the footing that the inamdars were entitled to the kudiwaram and the

melwaram. The conclusion is irresistible that the inam comprised both the warams.

The inams were originally granted to the temple for the performance of services connected therewith. The trustees of the temple appointed persons to perform those services and placed the inams in their possession to be enjoyed by them as remuneration for the services to be rendered by them. The Inam Commission confirmed the grants of the inams in favour of the hereditary officeholders then rendering the services. Where there were several holders of the office, the inams were shown to be in their enjoyment in equal shares. It is quite clear that the inams were granted to the holders of hereditary offices as remuneration for services to be rendered by them in connection with the temple.

There is a well-recognised distinction between the grant of the land burdened with a condition of service and the grant of land as remuneration for an office, see Forbes v. Noor Mahomed Tuquee [(1870) 13 H.I.A. 438, 464.]. Section 44-B does not apply to a personal inam burdened with a condition of service. See P. V. Bheemsena Rao v. Sirigiri Pedda Yella Reddi [[1962] 1 S.C.R. 339.]. It applies to an inam granted to an office-holder as remuneration for his services connected with a math or temple as also to an inam granted to the institution directly. The inams in the present case were not personal inams. They were inams granted to office-holders as remuneration for services to be rendered by them and were within the purview of s. 44-B

The next question is whether s. 44-B allows resumption of an inam falling within the purview of the section where the inam was alienated before the section came into force in 1934. Sub-section (1) of s. 44-B renders null and void certain alienations of the inam. Sub-section (2) authorises resumption of the inam on certain grounds. Sub-section (2) is not dependent upon sub-sec. (1) and allows resumption even in cases where there has been no alienation of the inam. In the present case, we are not concerned with the retrospective operation of sub-sec. (1) of s. 44-B and we express no opinion on it. But there can be no doubt that s. 44-B (2)(a)(i) allows a resumption of the inam where there has been an alienation of the inam either before or after 1934. Even apart from s. 44-B, any inam whatever its nature could be resumed for failure to perform the conditions of the grant. Subject to certain restrictions and safeguards, paragraph 2 of the Board's Standing Order No. 54 permitted resumption of religious and charitable inams on the ground that the land was alienated or otherwise lost to the institution or service to which it once belonged or on the ground that the terms of the grant were not observed. The object of s. 44-B was to define and enlarge the grounds on which the inams could be resumed and to devise a proper procedure for the resumptions. On general grounds of public policy, the legislature has declared that the inam may be resumed on any of the three grounds mentioned therein. The first ground is that the holder of the inam has made an alienation. The words "has made" in sub-s. (2)(a)(i) takes in all alienations past and future and not only future alienations or alienations made after the section came into force. If there has been any alienation at any time the first ground exists and the inam may be resumed under s. 44-B. The words "has failed" in sub-s. (2)(a)(ii) and the words "has ceased" and "has become" in sub-s. (2)(a)(iii) similarly authorise resumption of the inam if the other grounds exist though they may have arisen earlier. Section 44-B(2) is in its direct operation prospective as it authorises only future resumption after it came into force. It is not properly called retrospective "because a part of the requisites for its action is drawn from a time antecedent to its passing." See Maxwell on Interpretation of Statutes, 11th ed, p. 211. The inams in the present case are resumable under s. 44-B(2)(a)(i) though the alienations were made before 1934.

Section 44-B(2)(a)(i) is attracted if the holder of the inam has made an exchange, gift, sale or mortgage of the inam or has granted a lease of it for a term exceeding five years. In the plaint in

Suit O.S. No. 4 of 1954 the plaintiffs claimed that one Kunjanna Ayyar, their predecessor-in-title purchased the lands from the inamdars before 1861. The plaintiffs failed to prove that the inamdars sold the lands. The only direct evidence as to how Kunjanna Ayyar came into possession of the suit lands is furnished by Ex. A-2, a statement made by the inam-holders to the Madurai District Collector on August 14, 1868. It shows that Kunjanna Ayyar had taken the lands on cowle from the inamdars. The word "cowle" means a lease. In Wilson's Glossary it is stated that the word ordinarily denotes a lease and not a mortgage. Before the District-Collector the plaintiffs admitted that they were holding under a cowle lease. The District Collector held that the alienation was within the purview of s. 44-B. The High Court also held that the plaintiffs and their predecessor-in-title were in enjoyment of the lands under the lease. At no stage of the litigation either before the revenue authorities or in the plaint or before the District Judge or in the High Court did the plaintiffs contend that the alienation in their favour was not within the purview of s. 44-B(2)(a)(i). As a matter of fact, the case made in the plaint was that their predecessor-in-title had purchased the land from the inamdars. Such an alienation is clearly within the purview of s. 44-B(2)(a)(i). For the first time in this Court it is contended that the alienation was by way of a lease from year to year. If may be conceded that all leases do not come within the purview of s. 44-B(2)(a)(i). The lease must be for a term exceeding 5 years. A lease from year to year is not a lease for a term exceeding 5 years howsoever long the lessee might have continued in possession of the demised lands. But we think that the plaintiffs ought not to be allowed to raise at this late stage the novel contention that the lease was from year to year. This contention is contrary to the case made by them in the plaint. Moreover, the materials on the record do not support the contention. The plaintiffs and their predecessor-in-title were in continuous possession of the lands for over 80 years under the cowle lease. The original cowle is not forthcoming. The plaintiffs claimed to be permanent alienees of the lands. In all these circumstances, we are inclined to presume that the cowle granted a permanent lease and the inams were resumable under s. 44-B(2)(a)(i).

There is no period of limitation prescribed for the initiation of proceedings under s. 44-B(2). The section gave a new statutory right of resumption of the inams. On a resumption of the inams, the title, if any, of all persons claiming through the inamdars to any subordinate interest in the inams stood determined. Kunjanna Ayyar and his successors-in-title were lessees of the inam lands under the inamdars. During the continuance of the tenancy, their possession was not adverse to the inamdars. A fortiori, their possession was not adverse to the Government under whom the inamdars held the inam lands. They did not acquire any prescriptive title to the kudiwaram rights either against the inamdars or against the Government. The Government could, therefore, resume the inam lands made under s. 44-B(2) and dispossess the inamdars and the plaintiffs claiming as lessees under them. The question whether an alienee from the inamdar can acquire prescriptive title to the kudiwaram rights in the inam lands against the Government and thereby defeat the latter's right to resume the inam does not, therefore, arise for decision, and we express no opinion on it. It may be noted that in Roman Catholic Mission v. State of Madras [[1966] 3 S.C.R. 283, 299.] this Court held that there is no limitation barring imposition of assessment on the land after resuming the melwaram.

It follows that both the Kudiwaram and melwaram rights were rightly resumed under s. 44-B(2)(a)(i).

In the result, the appeals are dismissed. In all the circumstances of the case, there will be no order as to costs.

Appeals dismissed.##

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