

K. M. Sengoda Goundar and Other

Vs

State of Madras and Another

Civil Appeal No. 1287 of 1967

(K.K.Mathew, M.H. Beg JJ)

17.08.1973

JUDGMENT

MATHEW, J. -

1. The second respondent filed a writ petition before the High Court of Madras challenging the validity of a notification issued by the State Government under Section 3 of the Madras Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (Act 26 of 1963), on the ground that Komarapalayam Agraharam, Tiruchengoda Taluk, Salem District, is not inam and therefore the notification can have no application to that hamlet. He also challenged the constitutional validity of the aforesaid Act. During the pendency of the writ petition, the appellants, claiming to be the tenants under the inamdar got themselves impleaded as Respondents 2 to 31 to the writ petition. The High Court came to the conclusion that the Act is constitutionally valid but that the hamlet in question is not an inam or part of the village inam and, therefore, the Act can have no application to it, and allowed the writ petition. This appeal, by certificate, is from the judgment of the High Court.

2. Komarapalayam Agraharam is comprised in Jagadapady village. The question whether Komarapalayam Agraharam is inam was raised at an earlier stage by some of the tenants of the hamlet and the matter came up before the High Court and the decision of the High Court is reported in Sellappa Gounder v. Bhaskaran ((1960) II MLJ 363 at 367.). There the history of this village as gathered from the inam papers was set out thus :

"Whether Komarapalayam village was an inam village or not would depend on the terms of the grant. The grant, however, is not in evidence. The copper plate which was produced at the time of inam settlement proceedings is not now available. What we have is only Ex. A-1 the extract from the fair inam register relating to the village. From Ex. A-1 it appears that in the year 1760, Krishna Raja Udayar, the Rajah of Mysore granted the village of Jagadapady or Nattapatti, together with 12 hamlets to certain Brahmins. Komarapalayam was one of the 12 hamlets. The grant, however, was not by way of gift of either the land or any portion of the assessment thereon. A number of Brahmins subscribed and collected a sum of Rs. 50,000 Rajagopala Pagodas. Four of them who represented the others as well paid the amount into the treasury and obtained a grant of Jagadapady and the 12 hamlets rent free from the ruler. Presumably, the grant was the result of a consideration paid by the grantees and was not really attributable to any benefaction by the ruler. When Tippu Sultan came to power, he resumed six of the 12 hamlets allowing the successors of the original grantees to remain in possession of the rest without any obligation to pay any rent on that portion of the village. On the assumption of sovereignty by the British, Captain

Macleod confirmed the title on the successor of the grantees in regard to the lands in their possession. During the enquiry by the Inam Commission, it was found that the inam was enjoyed in 110 vritties; however only persons holding 90 vritties appeared and filed statements and there was no claim for about 20 vritties. The Inam Commissioner confirmed the inam subject to an assessment of Rs. 566-11-3 in addition to quit rent of Rs. 299-12. There is no evidence to indicate as to what happened to that portion of the grant which was taken over by Tippu Sultan."

3. We think that the original grant was made in consideration of the payment of the sum by the grantees and the grant was not therefore an inam grant.

4. The circumstance that the grant was treated as an inam at the time of the inam settlement proceedings and that title deeds were issued on that basis, cannot affect the original character of the grant. An inam title deed does not operate either to enlarge or abridge the rights of the inamdars under the original grant.

5. Learned Counsel for the appellants contended that even assuming that the original grant in favour of the predecessors-in-interest of the second respondent was for consideration, when Tippu Sultan resumed the 6 hamlets comprised in the village of Jagadapady, it must be presumed that he made a fresh grant of the other 6 hamlets comprised in the village and, therefore, the original character of the grant has not relevancy in determining the tenure of the Agraharam, as the fresh grant was an Act of State by a new Sovereign which destroyed its original character. The inam register does not show that Tippu Sultan resumed Komarapalayam Agraharam. On the other hand, it definitely shows that he confirmed the previous grant in respect of the 6 hamlets including Komarapalayam Agraharam. When the inam register shows that 6 hamlets included in Jagadapady village were resumed and the grant in respect of the remaining 6 hamlets was confirmed, the inference is irresistible that there was no change in the character or tenure of the 6 hamlets which were not resumed. In other words, confirmation can only mean that the title under which these hamlets were being held was accepted and recognised by Tippu Sultan. It cannot therefore be said that there was a re-grant by Tippu Sultan in respect of Komarapalayam Agraharam. There was no case for the appellants that the British Government did not confirm what Tippu Sultan did. On the other hand, their positive case was that there was a re-grant of the 6 hamlets including Komarapalayam Agraharam by Tippu Sultan and that the British Government confirmed the re-grant by Tippu Sultan. When once it is found that Tippu Sultan did not make a re-grant, but only confirmed the previous grant, there is no difficulty in holding that there was no change in the original character of the grant which was one for consideration. The fact that the inam register would indicate that the hamlet in question along with some others was resumed by William Macleod in 1207 Fasli and that the hamlets were granted as inam would not be decisive in view of the statements in the inam register showing that the hamlets were given rent free and patta issued for them. However, it is not necessary to go into that aspect of the case because the 1st respondent, the State of Madras, had no case that the British Government resumed Komarapalayam Agraharam and made a re-grant. Their only case before the High Court and in their statement of case here was that the previous grant was confirmed. In these circumstances we see no reason to differ from the finding of the High Court that Komarapalayam Agraharam is not an inam within the meaning of Section 2(4) or part of an inam village within Section 2(11) of the Act in question.

6. We think the conclusion of the High Court was correct and we dismiss the appeal but in the circumstances without any order as to costs.

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