Subramania Gurukkal (dead) through Muthusubramanis Gurukkal and Others

Vs

Shri Patteswaraswami Devasthanam, Perur by its Executive Officer and Others

Civil Appeal Nos. 1995 to 2021 of 1979, with Civil Appeal Nos. 1994 of 1979, 1914 of 1982, 1953-59 of 1981 with I.A. Nos. 1-7 of 1991 and 1-8 of 1992

(S. Mohan, N. Venkatachala JJ)

08.12.1992

JUDGMENT

MOHAN, J. –

1. All these appeals can be dealt with under a common judgment since Civil Appeal Nos. 1995 to 2021 of 1979 and 1953-59 of 1981 are directed against the judgment of the Division Bench of the Madras High Court dated April 13, 1978 by which the High Court set aside the conclusion arrived at by the Tribunal that the appellants before us, were service holders and that they would be entitled to ryotwari pattas. It was further held that the first respondent Shri Patteswaraswami Devasthanam, hereinafter referred to as the Devasthanam, alone was the grantee of the inam.

2. Civil Appeals No. 1914 of 1982 and No. 1994 of 1979 are directed against the judgment of the High Court dated August 29, 1978 which followed the earlier judgment dated April 13, 1978.

3. The brief facts of the case are as follows :

> The Settlement Tehsildar-II, Gobichettipalayam initiated 'suo motu' proceedings under the provisions of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Act XXX of 1963) hereinafter referred to as the Act, in respect of the issue of ryotwari patta in respect of service inams in Perur village. After holding the necessary inquiry, he directed the grant of ryotwari pattas with reference to the lands comprised in each inam title deed under Section 8(2) of the Act by treating the lands as 'iruvaram minor inams' granted for the performance of services connected with the Devasthanam, first respondent herein. He ordered that pattas be issued to the service holders under Section 8(2)(ii) of the Act holding that Section 8(2)(i) was not applicable as there was no alienation in respect of these lands. While directing that pattas be issued to the service holders such grant was made subject to the provisions of Section 21 of the Act. This direction was necessary in view of Section 8(5) of the Act. Aggrieved by these orders both the service holders and the Devasthanam preferred appeals before the Tribunal questioning the correctness of the orders of the Settlement Tehsildar. Several appeals were preferred before the Tribunal since the identical issues as to whether it was the Devasthanam or the service holders who were actually entitled to pattas arose, they came to be dealt with under a common judgment.

4. The main points that arose for determination before the Tribunal were :

(1) Whether there was an absolute grant to the Devasthanam ?

(2) Whether the grant was of both the varams or only of melvaram ?

(3) Whether even if it was an iruvaram grant, the grantee could be deemed to be the 'Oozhiamdar' ?

(4) Whether the grant has to be classified as Class II namely, an inam for the service as such or whether it is one coming under the descriptions of Class III in favour of an individual rendering service to the deity ? and

(5) Whether it will be sufficient, if the service inam was in favour of the individual, for the Oozhiamdars to merely show that they are the persons in actual possession now of the land rendering service and therefore entitled to patta or whether it is incumbent on them to further show that they were hereditarily entitled to the inam land. In the latter case, they would be obliged to establish the link between them and the original grantee if the grant was to the individual. As inam, in essence, is the grant of land revenue, in most cases, if the kudivaram always vested with the person in possession in the village, neither any grant nor any resumption would affect the occupancy right. In that case, the kudivaram would always vest with the person in possession, and if the service holder continues to do the 'oozhiam' his obligation to do such service would certainly be distinct from his right to kudivaram.

5. On an elaborate consideration of these points the Tribunal ultimately held that the grants were personal to the service holders and not absolute grants in favour of the Devasthanam. The Tribunal was of the view that the grantees were the Oozhiamdars falling under the description of Class III and thus it concluded :

"It is only the present service-holder rendering service that would be entitled to ryotwari patta if he is also in possession of the land in respect of these personal service inams which were iruvaram grants."

6. Aggrieved by this judgment several Special Tribunal Appeals (STA) under Section 30 of the Act were preferred to the High Court. The Division Bench posed for its determination the only question as to who was entitled to the issue of ryotwari patta under Section 8(2)(ii) of the Act, the appellant or the Devasthanam. After referring to the relevant case-law, the High Court set aside the conclusion of the Tribunal (vide its judgment dated April 13, 1978). It held as under :

"We accordingly set aside the conclusion arrived at by the Tribunal below that the oozhiamdars respondents herein are service-holders and that they would be entitled to ryotwari patta on proof of their having been in possession of the lands. Instead we hold that the Devasthanam would be entitled to ryotwari patta being the original grantee. The service-holders who still continue to be in possession of the properties, rendering services to the Devasthanam, would continue to enjoy the lands in lieu of their remuneration from the Devasthanam, so long as they continue to do service. The moment they discontinue to do such services, the Devasthanam would be entitled to take such actions as is open to it under law."

7. When similar appeals came before the High Court, following this judgment, the High Court by its order dated September 29, 1978 allowed the appeal of the Devasthanam, the first respondent herein.

Insofar as the service holders are adversely affected by the order of the High Court appeals have been preferred to this Court.

8. Mr. S. Padamanabhan, the learned counsel for the appellants, addressing the leading arguments submits that Section 2(5) of the Act defines an Inam. That says a grant "confirmed" or "recognised" by the Government.'Confirmed' means confirmed by the Inam Commissioner. As a matter of fact, in K. Somasundaram v. State of Madras (AIR 1953 Mad 246) at page 251 there is a judicial pronouncement to that effect. Therefore, the courts have always taken the view that the entries in the Inam Fair Register should be given due importance. In Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu (1991 Supp (2) SCC 228) it was held that the entries in the Inam Fair Register are great acts of the State. Those entries coupled with the entries in the survey and settlement record could furnish unimpeachable evidence. Similar view is taken in Jammi Raja Rao v. Sri. Anjaneyaswami Temple Valu ((1992) 3 SCC 14, 25, 26 : AIR 1992 SC 1110, 1117) at page 1117. Learned Judges of the High Court have rejected these entries on the ground that the entries made therein by the Inam Commissioner without going into the original grant cannot be a decisive one. In this case, the original title deed is not forthcoming. In the absence of it, if the Inam Commissioner had prepared the Inam Fair Register, there is no justification to reject those entries. In exactly similar situations the Madras High Court was of the view, having regard to the importance of the recitals of the Inam Fair Register even though the original title deed is not produced recitals could not be ignored. This was so in M. E. Muthirula Mudaliar v. M. E. Nataraja Mudaliar ((1974) 87 Mad LW 643 : (1974) 1 MLJ 129).

9. On an analysis of the entries in the Inam Fair Register it is seen that column 8 contains the entry :

> "Devadayam granted for the samamdam in the Paroda of Patteswaraswami at Perur and it is continued."

10. Column 10 says "Permanent so long as it is continued". The question will be what is the value to be attached to these entries ? That can be gathered from various cases. In Shri Vallabharaya Swami Varu (Deity) of Swarna v. Deevi Hanumancharyulu ((1979) 3 SCC 778 : AIR 1979 SC 1147) following an earlier decision of this Court reported in Poohari Fakir Sadavarthy of Bondilipuram v. Commissioner, Hindu Religious and Charitable Endowments (1962 Supp (2) SCR 276 : AIR 1963 SC 510), it was held the word "Devadayam" only denotes the religious character of the endowment including a service inam attached to a temple. The same view was taken by the Madras High Court in Sami Ayyangar v. Venkatramana Ayyangar (AIR 1934 Mad 381). Therefore, that is not in any manner conclusive.

11. Then comes column 10. In Thirulakshmi Ammal v. Special Tehsildar for L. A. Neighbourhood project, Madurai ((1973) 86 Mad LW 613 : (1973) 2 Mad LJ 317), the Madras High Court construed a similar entry in column 10 where it was stated as permanent. It was held that the grant was personal for the person performing the service and it was not in favour of the Devasthanam.

12. The next submission of the learned counsel is that the Division Bench of the Madras High Court chose to rely on Exs. B-1 to B-3. They are not in any manner conclusive. Even though under Ex. B-3 it was directed that the title deeds of service inams be cancelled and a single title deed be issued, there was no follow-up action as in the case of Shankara Ramanallur village. Ex. B-1 cannot be called a Sanad. Under identical situation the Madras High Court in Sri. Akkaloi Ammani Chatram v. State of T. N. ((1980) 93 Mad LW 63 : AIR 1980 Mad 149) held construing the relevant documents that it was only a proposal to make a grant and not the grant by itself. In this case, the grant is

personal to the Oozhiamdars burdened with service. Therefore, so long as the grantee is rendering service and is ready to render service the Devasthanam could merely enforce the terms of the grant. In the absence of actual cancellation of those title deeds the Devasthanam cannot claim any right. This finding of the Tribunal was perfectly in order and the High Court was not justified in interfering with the same.

13. Mr. A. T. M. Sampath, the learned counsel, supporting Mr Padmanabham urged that this is a case to which a statutory presumption under Section 44 of the Act would apply. Further Ex. B-1, Register shows the names of all Oozhiamdars and Varamdars. Besides the land in possession of Varamdars are also mentioned. Where the service holder was already in possession, if the title deed was continued to the individuals, certainly the Devasthanam cannot claim anything more than the melvaram right.

14. No lease deed has been executed by the service holders in favour of the temple. Merely because the Devasthanam had a right to supervise that would not confer upon it a right to the property as such. Thus it is submitted, having regard to the voluminous documents including the Inam Fair Register which is prepared at the time of the settlement, being an act of the State, the conclusion arrived at by the High Court cannot be sustained.

15. Mr. K. Parasaran, the learned counsel appearing for the respondents Devasthanam would submit : This is a case in which the grant was of both the varams. Therefore, the Devasthanam alone is the Inamdar being the owner of iruvaram land. Consequently, it will be entitled to patta. The appellants service holders derived the rights to enjoy the land under contract with the Devasthanam. They could never be the original grantees. In other words, they are the assignees of the rights of enjoyment. However, that was conditional in nature. So long as they performed the service they could have a right of enjoyment.

16. The absence of original grant would not matter. The nature of the grant could be deduced from the various other documents. Those documents in this case are Ex. B-1 prepared as early as on July 14, 1802. That is the Sanad in which the village in question is termed as the Manyam of the Devasthanam. There was also a grant of title deed to the manager of the Devasthanam on January 8, 1864 which was Ex. C-1. That acknowledged the title of Devasthanam.

17. Then comes Ex. B-2 dated August 22, 1890. That unmistakably mentions 'Sarvamanyam'. Further mention to the grant of the village Perur was made only to the temple.

18. Ex. B-3 goes a step forward. As early as on February 16, 1893 it was directed that all title deeds of service inams be cancelled and a single title deed be issued in favour of the Devasthanam in confirmation of the original grant in favour of the deity. Merely because there is no follow-up action it does not mean that the evidentiary value of Ex. B-3 is in any way lessened. There were also court proceedings on these documents by way of Ex. B-4 to B-25 which based their judgments on these exhibits. As a matter of fact, the decision on Ex. B-27 was confirmed by the High Court.

19. It is not the submission of the learned counsel that Devadayam is conclusive but if the said entry in the Inam Fair Register is read in conjunction with other documents it will be clear that the grant is only in favour of the Devasthanam and that the grant was to the deity Shri Patteswaraswami.

20. As a general proposition of law that the entries in the Inam Fair Register have to be given due importance, cannot be denied. An analysis of the entries in the relevant Inam Fair Register shows

that column 8 describes as "Devadayam" and column 10 states "permanent". In the light of these entries the ratio laid down in Buddu Satyanarayana v. Konduru Venkatapayya (1953 SCR 1001 : AIR 1953 SC 195), will have to be applied. Construing the similar entries it was held that the deity was the grantee. The same principle applies here.

21. The case of Shri Vallabharaya Swami Varu ((1979) 3 SCC 778 : AIR 1979 SC 1147) has no application to the facts of the case because in that case under column 10 it was stated as "hereditary" which is not so in the present case. Equally in Thirulakshmi Ammal case ((1973) 86 Mad LW 613 : (1973) 2 Mad LJ 317) though column 10 described it as permanent, it was supported by the statement before the Inam Commissioner. In the case on hand the original grant was not available. Under those circumstances, as rightly held by the High Court the entries in the Inam Fair Register need not be accepted on its face value. This Court has, in fact, held so in Poohari Fakir Sadavarthy (1962 Supp (2) SCR 276 : AIR 1963 SC 510). It may be that the service holders were in possession for a long time. That by itself cannot enable them to claim patta because they are lease holders enjoying the land in lieu of service. Nor does a statutory presumption arise under Section 44 of the Act. For all these reasons, it is submitted that no case is made out for interference.

22. Having regard to the above submissions the following points arise for our determination :

(1) The nature of inam grant;

(2) Construction to be placed on the entries in the Inam Fair Register.

23. We will briefly trace the origin and the meaning of inam.

24. From ancient times grants of land free of revenue payment as well as mere assignments of the Government's share of produce or revenue called 'Manyams', were made to individuals or institutions. The term 'inam' connotes a gift or reward. Madhavan Nair, J., delivering the Judgment in Kumbham Lakshmanna v. Tangirala Venkateswarlu (ILR (1950) Mad 567 (PC)) expressed its meaning thus :

> "Inam is well-known word of 'Arabic' origin which means reward or favour. The word came into use after the Muhammadan conquest. In ancient days, grants of land, or revenue, were made by Hindu sovereigns to individuals, particular families or communities for various purposes or to religious institutions for their upkeep. These were known as 'Manyams'. The practice was continued by the Muhammadan rulers, and later by the East India Company also, till it was discontinued in the earlier years of the 19th Century as a result of instructions received from the Directors of the Company. Thenceforward, gifts of land were granted only in special cases, the ordinary cases being provided for by the grant of money pensions." [vide 1963 (1) MLJ at page 6]

25. In the year 1858 an Inam Commission was established to examine the title of the possessors of the inams and to enfranchise them for a quit rent in lieu of the Government's right to resume. The Inam Commission after elaborate consideration and investigation of titles, enfranchised and confirmed the grants wherever proof was available. It was only thereafter title deeds were issued to the holders of the inams.

26. The inam grants were of varied extents. Sometimes they comprised whole villages; sometimes they were only of parts of villages. Then again, the inams themselves were of different species.

Some comprised both the kudivaram as well as the melvaram interest in the land, others of the melvaram due to the State alone. But the distinguishing feature of an inam is that it is always accompanied by the grant or remission of revenue either in whole or part of the revenue.

27. The minor inams came to be abolished by the Tamil Nadu Act (Act XXX of 1963). Its long title states that it is an Act to provide for the acquisition of the rights of Inamdars in minor inams in the State of Madras (presently Tamil Nadu) and the introduction of ryotwari settlement in such inams. Under Section 2(5) of the Act 'inam' has been defined thus :

> "(5) 'inam' means
>
> (i) a grant of the melvaram in any inam land; or
>
> (ii) a grant of both the melvaram and the kudivaram in any inam land;
>
> which grant has been made, confirmed or recognised by the Government;"

28. When Section 2(5) says 'confirmed', obviously it means confirmed by the Inam Commissioner as stated in K. Somasundaram v. State of Madras (AIR 1953 Mad 246). At page 251 paragraph 27 it is stated :

> "To come under the definition vis-a-vis the question raised in the case, the grant of the village should have been made, confirmed or recognised by the British Government. During the rule by Hindu rajahs, they used to make grants of land either rent-free or on favourable rent for the support of charitable institutions, for the sustenance of Brahmins and for the maintenance of officers etc. This practice was followed by the Moghul Government. The British Government also made similar grants but they were very few and that system was discontinued. The British Government found that there were various grants of inams the original whereof was lost in antiquity and made various attempts to investigate their title and systematise the tenures. Finally, in the year 1858, they appointed the Madras Inam Commission. The Commissioner made an elaborate enquiry, formulated rules and to a large extent investigated the titles and stabilised the tenures. The preparation of the inam register was described by the judicial committee as a great act of State. The investigation was based upon not only oral evidence but on the Collectors' records, the standard inam registers and the accounts of the taluks from the earliest to the most recent period. The Inam Commissioner after satisfying himself about the origin of the tenure either on the basis of the original grants or on the ground of long possession, confirmed the inam grants and, in some cases, enfranchised them. It is not necessary to go into details of the investigation or the manner in which the rate of quit rent was ascertained and fixed. Suffice to say that the Inam Commissioner after satisfying himself, in accordance with the rules framed for the purpose, confirmed the grants or enfranchised them as the case may be, and issued a title deed to the inamdar, or if they were in the hands of different persons, different title deeds to them. The word 'confirmed' in the sub-section has always been understood to be the confirmation of the grant by the Inam Commissioner."

29. Section 8 deals with the grant of ryotwari pattas. In the instant case we are concerned with Section 8(2) which reads as follows :

"Notwithstanding anything contained in sub-section (1) in the Madras Hindu Religious and Charitable Endowments Act, 1959 (Madras Act 22 of 1959) and in the Madras Transferred Territory Incorporated and Unicorporated Devaswoms Act, 1959 (Madras Act 30 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 for the performance of a charity or service connected therewith or of any other religious charity -

(i) where the land has been transferred by way of sale and the transferee or his heir, assignee, legal representative or person deriving rights through him had been in exclusive possession of such land -

(a) for a continuous period of sixty years immediately before the 1st day of April, 1960, such person shall, with effect on and from the appointed day, be entitled to a rytowari patta in respect of such land;

(b) for a continuous period of twelve years immediately before the 1st day of April, 1960, such person shall, with effect on and from the appointed day, be entitled to a ryotwari patta if he pays as consideration to the Government in such manner and in such number of instalments as may be prescribed an amount equal to twenty times the difference between the fair rent in respect of such land determined in accordance with the provisions contained in the Schedule and the land revenue due on such land;

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

Explanation. - For the purpose of this sub-section, 'land revenue' means the ryotwari assessment including the additional assessment, water-cess and additional water-cess."

30. The question before us is whether in the instant case the grant is in favour of the institution or the individual rendering service as spoken to under Section 8(2)(ii).

31. This is a case in which the grant consists of both the varams. In other words it is an iruvaram grant. Therefore, it has to be decided whether the original inam grant was made by the previous sovereigns to the Devasthanam for its support or to the Oozhiamdars on condition of their rendering service to the Devasthanam. The question could have been easily answered if the original title deed was forthcoming. But unfortunately in this case the original title deed is lost. It was this which influenced the Tribunal when it commented upon the non-production of the original title deed by the Devasthanam and made the Tribunal draw an adverse inference. But the High Court took the view that even in the absence of the original title deeds, the nature of the grant could be decided by looking into the evidence with regard to the terms of the grant itself and the evidence relating to possession and enjoyment by the service holders. But such possession and enjoyment would be evidence of grant only in the absence of any reliable or cogent evidence with regard to the terms of grant itself. As a matter of fact, in several cases even in the absence of original grant the other evidence was looked into for deciding the nature of grant (vide Narayanamurthy v. Achayya Sastrulu (47 MLJ 714) or Buddu Satyanarayana v. Konduru Venkatapaiah (AIR 1950 Mad 586), which was appealed against to this Court in Buddu Satyanarayana v. Konduru Venkatapayya (1953

SCR 1001 : AIR 1953 SC 195)). While Mr. Padmanabhan contends that in the absence of the original title deeds the entries in the Inam Fair Register must govern, Mr. K. Prasaran in opposition would urge that such entries alone cannot be held to be conclusive because there is more valuable evidence in this case like Ex. B-1 to B-3; and the previous proceedings of the courts like Ex. B-27, B-5 to B-7 etc. We will examine the correctness of these arguments before we come to the entries in Inam Fair Register.

32. Ex. B-1 is dated July 14, 1802 which is a certified copy of the Sanad given to Perur Devasthanam. The salient features of Ex. B-1 are : (a) it indicates that the lands in Perur village from the 'manyam' of the temple from a long time; (b) it lists out the oozhiams to which the lands were assigned; (c) it was stated that as the possession in the land was taken over by those doing service there need not be further cultivation by the sarkar kudigal; (d) it mentions that any alienation will be illegal; (e) it further mentions "without any defect in the service, the possession shall be made". This should obviously mean, in our opinion, so long as the service was rendered the land will continue to be in possession of those rendering service; (f) with reference to each oozhiam the word 'isum' is mentioned which means 'permanent'; (g) should there be any alienation by the particular service holder the land was liable to be resumed.

33. Though the High Court placed reliance on these documents the Tribunal was of the view that the word Sanad used in these documents could convey no legal implication. It was just an order of the Collector or a circular passed on to the Tehsildar. We do not think this approach of the Tribunal is correct since this is only a supporting document on behalf of the Devasthanam to decide the nature of the grant.

34. Then we come to Ex. C-1 which came to be marked in the High Court by the consent of the parties. This is dated January 8, 1864. That clearly spells out that it was a title deed granted to the manager for the time being of the Pagoda of Shri Patteeswaraswami. It unmistakably says that the Secretary of the State for India in Council, acknowledges the title deed to a Devadayam or Pagoda Inam. The date of original settlement is January 8, 1864 and it was renewed on February 22, 1900.

35. The next document is Ex. B-2 dated August 22, 1890. That says : "The entire village was Sarvamanyam to the temple long before the reign of Madura Tirumal Naidu Garu". This was continued from time to time. In the year 1877 the British Government granted the village to the temple as inam and issued a jaripatta to that effect. There is also an endorsement by the Inam Commissioner dated August 22, 1890 that the village of Perur and its hamlet Mavuthampadi may be treated as an entire inam village. This endorsement came to be approved by the Government.

36. Ex. B-3 is a document dated February 16, 1893. The relevant portion is as follows :

> "If the Perur Village had been treated as an Entire Inam Village at the Inam Settlement, as it should have been, no separate title deeds would have been granted to the temple servant and now that this initial mistake has been rectified, it naturally follows that these title deeds, which were erroneously issued, should be cancelled. Indeed, to permit the servants of the temple to remain as independent inamdars would be to defeat the very object which the Devasthanam Committee had in view in asking Government to declare Perur to be an Entire Inam Village. The temple servants cannot reasonably object to the cancelment (sic) of their title deeds, for they will still be secure in the enjoyment of their inams so long as they perform their duties properly."

37. In our considered view this document is of great significance. The Tribunal chose to reject this on the ground that there was no follow-up action as in the case of Sankaramanallur and something was done behind the back of the service holders. While doing so the Tribunal erred in not giving due importance to the legal proceedings wherein also this document had been relied upon and the judgment had become final. Besides the above documents, there were also court proceedings as seen from Ex. B-27, B-5, B-5 to B-25 wherein the Devasthanam's title as grantee of iruvaram rights as against the servants had been upheld. Though Ex. B-27 was an enquiry under Section 9 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, we should not loose sight of the fact that it is one of the supporting pieces of the evidence.

38. A-4 is a settlement register relating to the village in question. The entry shows that in respect of the lands owned by Devasthanam the Pattadar is Shri Patteswaraswami. Then the name of the trustee is mentioned. Service inams are separately classified. They are shown to be held to be tax free or on favourable terms. The name of the individual service holder is shown as Inamdar. This document has influenced the Tribunal to a great extent which held that the Devasthanam had no answer to the classification in the settlement register. We are afraid that the line of reasoning is not correct. All these documents must be read as a whole. More so, in the absence of original document of the title.

39. With this, we proceed to the entries in the Inam Fair Register. It cannot be gainsaid that great value must be attached to the entries contained therein. In Vatticherukuru Village Panchayat (1991 Supp (2) SCC 228), it was observed at page 242, para 13 as under :

> "Therefore, the entries in the IFR are great acts of the State and coupled with the entries in the survey and settlement record furnish unimpeachable evidence."

40. Similarly in Jami Raja Rao v. Sri. Anjaneyaswami Temple Valu ((1992) 3 SCC 14, 25, 26 : AIR 1992 SC 1110, 1117) etc., at page 1117 in paragraph 19 it was held : (SCC p. 25, para 19)

> "We are unable to hold that the High Court was not justified in preferring to place reliance on the entries in the Inam Register (Exs. B-1, B-2, B-4 and B-5) as compared to Ex. A-4 and Ex. A-6 which are documents executed by the members of the appellant's family and Ex. A-9, the register prepared by Turanga Rao, the father of the appellant after his appointment as a trustee under the 1927 Act. Laying stress on the importance of the entries in the Inam Registers, the Judicial Committee of the Privy Council, in Arunachellam Chetty v. Venkatachalapathi Guruswamigal (AIR 1919 PC 62 : (1919) 46 IA 204) has observed :
>
> 'It is true that the making of this Register was for the ultimate purpose of determining whether or not the lands were tax free. But it must not be forgotten that the preparation of the Inam Register was a great act of State, and its preparation and contents were the subject of much consideration under elaborately detailed reports and minutes. It is also remembered that the Inam Commissioners through their officials made inquiry on the spot, heard evidence and examined documents, and with regard to each individual property the Government was put in possession not only of the conclusion come to as to whether the land was tax free, but of a statement of the history and tenure of the property itself.'
>
> (pp. 217-218 of IA) : (p. 65 of AIR)"

41. But at the same time we cannot solely be guided by these entries. They must be read in conjunction with the other documents. As a matter of fact, in Poohari Fakir Sadavarthy (1962 Supp (2) SCR 276 : AIR 1963 SC 510) at page 291 this Court observed thus :

> "The fact that the Inam Commissioner treated the grant relating to Ex. P-50 to be in support of Sadavarti and for support of the temple of Sir Jagannadhaswami, would not make the grant for the purpose of the temple when the temple was itself not in existence at the time the grant was made and when a later sanad referring to it definitely stated that the original villages were granted for the purposes of charity. The observations of the Privy Council in Arunachellam Chetty v. Venkatachalapathi Guruswamigal (AIR 1919 PC 62 : (1919) 46 IA 204), that in the absence of the original grant the Inam Register is of great evidentiary value, does not mean that the entry or entries in any particular column or columns be accepted at their face value without giving due consideration to other matters recorded in the entry itself. We have already stated that the 'divine service' referred to in this entry does not refer to any religious worship but to the prayers to be offered by the grantee for the preservation of the State."

42. In the light of these principles we will now examine the various entries in the Inam Fair Register, Column 8 says : "Devadayam granted for the samamdam in Paroda of Pattesvaraswami at Perur and it is continued". This by itself is by no means conclusive or decisive that it was a grant to the temple or to an office attached to the temple. In Ayya Nadar v. Sri Vaidyanathaswami Koil Devasthanam ((1970) 2 Mad LJ 129 & 132) it was observed :

> "In Subramania v. Kailasanatha (ILR (1955) Mad 35), it has been pointed out that the word 'devadayam' is used in inam registers not only in connection with religious grants strictly so called but also where the ultimate purposes are religious. It is clear from the decision that the test to be applied in distinguishing a grant to an institution from a grant to an individual is the intention and that each case depends upon its own facts. In Sami Ayyangar v. Venkataramana (AIR 1934 Mad 381), it was held that devadayam in a grant does not necessarily import that the grant is made to the temple. It was further held that where a grant contains the clause that it is to be confirmed to party as long as he continues the performance of the service, it is a grant to the party burdened with service and not to the deity even though the word devadayam is used as the inam register disclosed that the land was continuously held at least for two generations by the family of the party. It appears from page 260 of Sundararaja Iyengar's Land Tenures that the mere description of an inam as devadayam is not conclusive that the grant is in favour of a religious institution, though it is a strong proof that the institution is a public one."

43. The authorities are not wanting in this regard. Again in Poohari Fakir Sadavarthy (1962 Supp (2) SCR 276 : AIR 1963 SC 510), it was observed at pp. 288-89 as under :

> "Ex. P-53 is the extract from the Register of Inams relating to village Ragolu in Chicacole Taluk. It records : 'In the sanad it was mentioned that the inam was given for the support of fakirs to the original grantee about a century ago. The other notes in this extract are particularly identical with those in Ex. P-52. The final order of the Inam Commissioner was also in terms similar, and was 'confirmed to the fakirs the Sadavarti charity according to the grant, free, three being no excess'. It is interesting

> to note that in column 2 (general class to which inam belongs) is noted 'Devadayam', i.e., dedicated to God; that in column 8 meant for the description of the inam is noted : 'for the support of Pagoda of Sri Jagannadhaswami in Bondilipuram', and that the entry in column 11 indicates that Anavaruddin Khan Bahadur made the grant in Hijiri 1171 corresponding to 1754-55 A.D. It is clear that the note about the land being dedicated to God is wrong in view of the definite statement that the Sanad mentioned that the inam was given for the support of fakirs to the original grantee (Mandasa Palahari Bairagi in Column 13) about a century ago and that it were the trustees of the institution who constructed the temple. When the temple was constructed by the trustees of the institution, viz., the Sadavarti institution, the original grant could not have been to the temple or to God. The entries in this extract confirm the construction we have placed on similar entries in Ex. P-52 and other extracts indicating the grant to the temple."

44. As rightly pointed out by the High Court even the title deeds issued in favour of the service holders described the character of the property as Devadayam; this entry read in light of the Ex. B-1, the genuineness of which was never challenged, lends great support to the arguments addressed on behalf of the Devasthanam. This decision has also been referred to in Shri Vallabharaya ((1979) 3 SCC 778 : AIR 1979 SC 1147), wherein the following observations are found : (SCC p. 778, para 2)

> "Column 1 of the Inam Fair Register describes the class of inam as Devadayam. But as observed in Venkayya v. Sriramamurthy (AIR 1957 AP 53), this description by itself cannot be determinative of the question since it only denotes that the endowment is of a religious character which will include a service inam attached to a temple."

45. Sami Ayyangar (AIR 1934 Mad 381) observed at page 381 as under :

> "The use of the word 'Devadayam' does not necessarily import that the grant was made to the temple,...."

46. Coming to the entries in column 10, the Inam Fair Register states 'permanent' so long as it is continued. The description in column 10 referring to the inam as permanent instead of hereditary is more consistent with the inam, being a service inam, rather than a personal grant burdened with service. Reliance is placed by Mr Padmanabham on Shri Vallabharaya Swami Varu (AIR 1957 AP 53) but it has to be observed in that case that column 10 of the Register shows that the grant was hereditary. On the contrary the case Buddu Satyanarayana (1953 SCR 1001 : AIR 1953 SC 195) relied upon by Mr. K. Parasaran is apt in this case. It observed at page 1004 as under :

> "The copy of the statement filed by the then Archakas before the Inam Deputy Collector was exhibited in this case as Ex. D/3. In the Inam Register (Ex. P/3) under the several columns grouped under the general heading "Class extent and value of Inam" this Inam is classified in column 2 as Devadayam. In column 3 are set out the survey numbers together with the word 'Dry' indicating the nature of the land comprised within the survey numbers. The areas are set out in column 5. The heading of column 7 is 'where no survey has been made and no assessment fixed by Government, the cess paid by the ryot to the Inamdar, or the average assessment of similar Government land should be entered in column (7)'. Under this heading are set out the amounts of respective assessments against the three survey numbers totalling

Rs. 198-13-9. We then pass on the next group of columns under the general heading 'Description, tenure and documents in support of the Inam'. Under column 8 'description of Inam' is entered the remark 'For the support of a Pagoda. Now kept up'. The entry in column 9 shows that the Inam was free of tax, i.e., Sarvadumbala. Under column 10 headed 'Hereditary, unconditional for life only or for two or more lives' is mentioned 'Permanent'. The name of the grantor as stated in column 11 is Janganna Rao and the year of grant is fasli 1179, A.D. 1770. In column 13 the name of the temple is set out as the original grantee. The name of the temple and the location of the temple are also set out under columns 16 and 17. Turning now to the statement Ex. D/3 caused to be written and filed by the then Archakas during the Inam Inquiry held in 1859-60. Sree Somasekharaswami Varu is given as the name of the Inamdar and the present enjoyer. The name of the temple is also set out under columns 3, 5, 6 and 12. Under the heading 'Income derived from the Inam - whether it is sarvadumbala or jodi. If jodi the amount' in column 13 is stated 'sarvadumbala Inam. Cist according to the rate prevailing in the neighbouring fields - Rs. 266-3-1'. This statement (Ex. D/3) bears the signature of the Karnams and the witnesses. It will be noticed that neither in the Inam Register Ex. P/3 nor in the statement Ex. D/3 is there any mention of the Archakas as the grantee or for the matter of that, having any the least interest, personal or otherwise, in the subject-matter of the Inam grant. The two exhibits quite clearly indicate that the Inam grant was made in favour of the temple by the grantor and that in the face of this definite evidence and proof of the nature of the grant, no presumption of a lost grant can be made in favour of the Archakas. We, therefore, in agreement with the High Court, hold that the deity was the grantee and the first question raised before us must be answered against the appellants."

47. Therefore the word 'permanent' signifies the grant in favour of the temple. An attempt was made by the appellant to distinguish this case having regard to the other entries, namely, to be confirmed to the party in column 16 - permanently so long as he continues the performance of the service. It is also argued the entry as permanent in column 10 is by no means decisive and in support of this Thirulakshmi Ammal ((1973) 86 Mad LW 613 : (1973) 2 Mad LJ 317) is cited. It must be remembered that in the Madras case, it was supported by the statement of the Inam Commissioner which is not so in the instant case. Therefore any conclusion arrived at by the Inam Commissioner without the original title deed cannot change the character of the grant as rightly held by the High Court. An analysis of the above leads us to the following conclusion :

(1) If a right has been confirmed on the original grantee the proceedings of the Inam Commissioner would have no effect to change its character vide T. V. V. Narasimham v. State of Orissa (1963 Supp (1) SCR 750 : AIR 1963 SC 1227);

(2) (a) Ex. B-1 dated July 14, 1802 is for the continuance of the Manyam granted to the Devasthanam under jaripatta in respect of the lands in the village in question listing out the 'oozhiams' for which the land was assigned.

(b) The genuineness of Ex. B-1 was not challenged at any point of time.

(c) The appellants sought to rely on this document and wanted to construe the word isum in their favour; Ex. B-1 lists only the various 'isums' and not 'isumdars'.

(d) Ex. B-5 to B-27 which are court proceedings lend credence to Ex. B-1.

(3) Ex. C-1 also shows the title to a devadayam or pagoda;

(4) Ex. B-2 is another valuable document to show the grant as 'sarvamanyam' to the Devasthanam granted by the previous sovereigns and confirmed by the British Government in the year 1799 by issue of a jaripatta;

(5) Ex. B-3, though no evidence is produced as to the follow-up action, being a document of high evidentiary value, cannot easily be disregarded;

(6) The various entries in the Inam Fair Register taken in conjunction with the other documents lead to the conclusion that the grant was in favour of the Devasthanam; more so, when the title deed issued in favour of the Oozhiamdars themselves referred states 'devadayam';

(7) The entry in column 10 as permanent lends support to the view that the grant was in favour of the Devasthanam;

(8) The entries in columns 21 and 22 of the Inam Fair Register alone cannot be decisive in the light of the other valuable evidence above referred to;

(9) No doubt the service holder was in possession and the service holders when in possession as derivate holders of the temple, they cannot set up an individual title.

48. In the result, we fully concur with the findings of the High Court and dismiss the appeals along with all interlocutory applications. However, there shall be no order as to costs.

</html