

ANDHRA PRADESH HIGH COURT

State of A.P

Vs.

Korukonda Bhattaru Appalacharyulu

Appeal No. 603 of 1954

(P Chandra Reddy, C.J., Srinivasachari and Sanjeeva Row Nayudu, JJ.)

16.03.1959

JUDGMENT

Chandra Reddy, C.J.

1. The question referred to the Full Bench by a Bench of this Court consisting of Umamaheswaram and Ranganadham Chetty, JJ., is as follows :

"Does the burden of proof lie upon the tenant or the landlord to show that the grantor reserved some interest in the land and granted the minor inam subsequent to the grant of the major inam in cases falling under Section 3(2)(d) of the Madras Estates Land Act ?"

2. The learned Judges felt that there was a conflict between the decision in *Rama Rao v. Linga Reddi*¹, and the two unreported decisions of this Court in Appeal No. 1217 of 1953, D/-26-11-1958 and Appeal No. 406 of 1954, D/-27-11-1958 and thought that the conflict should be resolved by a Full Bench.

3. The question referred to us arises in the following circumstances. A suit (O. S. No. 62 of 1953 on the file of the Subordinate Judge's Court, Srikakulam) was instituted for a declaration that village of Potli is not an estate within the meaning of Section 3(2)(d) of the Madras Estates Land Act (I of 1908) and that the provisions of Madras Act XXX of 1947 are not applicable thereto. The suit was opposed by the tenants as also by the State Government on the ground that notwithstanding the existence of certain minor inams, the village of Potli was an estate within the purview of Section 3(2)(d) of the Madras Estates Land Act as amended by Madras Act II of 1945 which introduced Explanation I to the Section. Overruling the objection of the defendants, the Subordinate Judge decreed the suit. The State of Andhra, the first defendant in the suit, has preferred the present appeal.

4. One of the points debated before the Division Bench was whether the onus was upon the landholder or the tenant to prove as to when exactly the minor inams were granted, i.e. whether they were anterior to the grant of the village or subsequent to it. It seems to have been brought to

the notice of the learned Judges that the conflict in

¹1956 Andh WR 89 : AIR 1957 And Pra 632

this behalf has been set at rest so far as this Court is concerned by the judgment of the Full Bench in *Sundaramareddi v. State of Andhra*², What we could gather from the order of reference is that the learned Judges thought that 1958-2 Andh WR 536 : AIR 1959 Andhra Pradesh 215 (F.B.) being a decision under Section 9(7) : of the Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), it is distinguishable and would not directly apply to a case falling under Section 3(2)(d) of the Madras Estates Land Act. But a close reading of that judgment would indicate that the principle enunciated therein would apply with full vigour to a question arising under Section 3(2)(d) (Explanation I) of the Estates Land Act as well. In the Full Bench decision reference was made to *Narayanaswami Nayudu v. Subrahmanvam*³, which dealt with Section 3(2)(d) of the Madras Estates Land Act and several other decisions which expressed the same view as ILR 39 Mad 683 and the majority of the Judges in the Full Bench decision expressed their assent to the proposition adumbrated in ILR 39 Mad 683 The following passage from ILR 39 Mad 683 may be extracted.

"The definition in Sub-Section (2), clause (d) was obviously intended to exclude from the definition of 'Estate' what are known as minor inams, namely, particular extents of land in a particular village, as contrasted with the grant of the whole village by its boundaries. The latter are known as 'whole inam villages'. The existence of 'minor inams' in whole inam villages is very common and if these inam villages do not come within the definition of 'Estate', almost all the Agrabaram, Shortriem and Mohasa villages will be excluded. This certainly cannot have been the intention of the Legislature Referring to this judgment, it was observed by one of us, who was a party to the Full Bench decision, that that decision, i.e., ILR 39 Mad 683 ; (AIR 1916 Madras 263) illustrates the rule as to the burden of proof, namely, "that in the absence of evidence to the contrary it should be assumed that the minor inams were anterior to the grant of the village." It was also pointed out there that a similar assumption was made by a Bench of the Madras High Court in *Bapiraju v. Vallayya*⁴, In the latter case, it was not possible to say from an examination of the documents as to which of the grants was earlier and yet it was assumed that the grant of mokhasa was subsequent to the grant of the minor inams.

5. It may be noted that the authority of ILR 39 Mad 683 was shaken by the judgment of the Madras High Court in *Ademma v. Satyadhyana Thirtha Swainivaru*⁵, which was followed in *Suri Reddi v. Agni Hotrudu*⁶ It is to nullify the effect of these two decisions and to restore the authority of ILR 39 Mad 683 that the legislature amended Section 3(2)(d) of the Estates Land Act by the Amendment Act II of 1945, introducing Explanation I, which is in these words :

"Where a grant as an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service or other tenure or been reserved

²1958-2 Andh WR 536 : AIR 1959 And Pra 215 (FB) ⁴(1947) 2 Mad LT 298 ⁶(1943) 2 Mad LJ 528

³ILR 39 Mad 683 : (AIR 1916 Mad 263)

⁵(1943) 2 Mad LJ 289

for communal purposes."

This furnishes a clue to the problem to be solved by us, We may here quote a passage from the Full Bench judgment which is pertinent in this context.

"In our judgment the Legislature would not have contemplated it cast the initial onus on the tenant to show that the minor inams existing in the village emanated from the original grantor prior to the main grant. There can be little doubt that the general intention of the statute is to confer rights of occupancy on the tenants of inam villages. As such, the legislative intent could not have been to place the onus on the tenant in this behalf. It is well-nigh impossible for any tenant to show as to when exactly the minor inams were carved out of the main village. All the records bearing on the point in issue would normally be in the possession of the landlord and the tenant cannot be expected to throw any light on it.

Many of them would have been inducted into possession long after the villages were granted in inam. That being the position, it would be defeating the very object of the registration if the tenant is required to establish that the minor inams were not later to the major grant. As far as possible, Courts should so construe a provision in an enactment as to give effect to the legislative policy. If this onerous burden is cast on the tenants, they would be deprived of all the benefit that is sought to be conferred on them by the legislation. A construction which would have such a result should be avoided." It is thus clear that in the opinion of the majority of the learned Judges, who decided 1958-2 Andh W.R. 536 : AIR 1959 Andhra Pradesh 215 (FB), the onus of proving that a named village was granted prior to the minor inams is upon the land-holder. But the initial burden lies on the tenant to prove that what was granted was a named village. When once that is done, it is for the land-holder to show that the grantor reserved the minor inams at the time of the grant of the whole village and that he granted the minor inams subsequent to the main grant. It was definitely observed in the Full Bench Judgment that the rule contained in the following passage in 1956 Andh W.R. 89 : (AIR 1957, Andh Pra 632), namely,

"The tenants in this particular case have not been able to exclude the possibility of the minor inams having come into existence at a later date under grants which might have emanated from the original grantor" was "contrary to the principles set out above" and to the dictum laid down by the learned Judge who decided 1956 Andh W.R. 89 : AIR 1957 Andhra Pradesh 632, in an unreported judgment of his in S. A. No. 666 of 1952 (Mad). This means that the Full Bench was not prepared to accept the proposition enunciated therein as correct.

6. Our answer to the question referred to the Full Bench is : The burden lies upon the landlord to show that the grantor reserved some interest in the lands and granted the minor inams subsequent to the grant of the named village in cases falling under Section 3(2)(d) (Explanation I) of the Madras Estates Land Act as amended by the Madras Act II of 1945.

7. The appeal will be posted for final disposal before the learned. Judges next Monday (23rd March 1959).

Answered accordingly.