ANDHRA PRADESH HIGH COURT

Nistala Seshayya Bhukta

Vs.

Vasa Bageyya

Appeal No.258 of 1956 and Memo of objections and C.R.P. Nos.852 to 863 of 1957 and Tr. A.A.O. Nos.443 and 444 of 1959, in O.S.52 of 1953

(P. Chandra Reddy, C. J., Chandrasekhara Sastry and Ramachandra Rao, JJ.)

24.01.1961

JUDGMENT

P. Chandra Reddy, C.J.

1. The questions that fall for decision by the Full Bench are whether Panasa Nandivada Agraharam is an estate within the meaning of Section 3 (2) (d) of the Madras Estates Land Act (hereinafter referred to as the Act) and whether Explanation 3 is applicable to it notwithstanding that a small portion of it was resumed prior to the passing of the Act.

2. This is the problem that presents itself in all the appeals and revision petitions. They arise out of suits brought by the appellant-petitioner for recovery of rents against tenants in the several Courts of Srikakulam district for different faslis.

3. These suits were resisted by the defendants, inter alia, on the defence that the lands being situate in an estate within the definition of Section 3 (2) (d) of the Act which described an estate, the Civil Court has no jurisdiction to try the suits. These objections prevailed with all the Courts and the plaints were returned for presentation to the proper Court, except in O.S. No.52 of 1953, the subject matter of which was 15 acres 76 cents. This suit was decreed as it was found to be ryotwari land and, therefore, excepted from the scope of 'estate' as defined in the Act.

4. The circumstances under which the tenure of these lands differed from the rest of the village will appear presently. The question whether these lands really constituted part of an estate or not is no longer a live one as the judgment and decree therein have become final, no appeal being taken against it by the tenants. The plaintiff has filed these appeals and revision petitions and canvasses the conclusion of the trial Courts.

5. The main point that calls for determination is whether the lands lie in an estate. This depends upon whether Panasa Nandivada Agraharam is an estate within the terms of the Act. The chief evidence, which has a bearing on this controversy is furnished by Ex.A.29, a copy of the yadast davulu account of 1834 and Ex.A-3, the inam fair register extract bearing on this village.

6. The first document discloses that the Agraharam was granted in or about the year 1694 by Pedakuramarajah Narendrayanugaru, the Zamindar of Palakonda to Aratla Venkata Rama Narasimhacharyulu. The Agraharam was bounded by four villages. The deductions shown therein are gramanivesanam, village topes planted about 150 years back, tanks, channel dug about 130 years back, gorjas, submersion areas and burial ground which are of an extent of 16 garces. The correctness of some of the recitals therein was not accepted at the inam enquiry as would appear from an extract of the inam fair register Ex. A-3. It is mentioned therein that the names of grantor and the grantee were not known. The Inam Fair Register extract shows that this village was granted in inam under one grant and that the village comprised of of 46 garces and 10 putties. It further appears from the document that Panasa Nandivada was an ancient Agraharam, that the entries made in the account of Fasli 1244 were accepted as correct by the Inam Commission, that an extent of 15 putties, which fell to the share of Panda Padmanabhachar yulu who joined with the pithuridars was added to the Government share and that it is not entered in that register. One of the entries in that document reads as follows :

> "This village Panasa Nandi Agraharam shares 2 and 9."

7. A combined reading of these two documents establishes that the inam consisted of a whole village and that an extent of 16 garces consisted of grama nivesanam, village topes, tanks, channel, gorjas, submersion areas and burial ground and these were deducted for the purpose of ascertaining the assessment payable by the inamdars. Although an argument was presented in the Courts below that, having regard to the deductions set out above, the grant could not be regarded as of a whole village but only a part of it, that was not repeated before us, since it is now well established that the exclusion of porambokes etc. could not detract from the nature of the grant of a whole village as an inam if otherwise the conditions of Section 3 (2) (d) of the Act were complied with. The exclusion of these sites was only to find out the amount of quit rent or assessment payable by the inamdars. Therefore, the conclusion of the lower courts that the original grant comprised of the whole village can no longer be called in question. In fact no attempt was made to assail that conclusion. Then, the position that emerges is that the entire village was given in inam to the predecessor-in-in-terest of the plaintiff. Therefore, the first ingredient of the definition contained in Section 3 (2) (d) of the Act has occurred here. The Inam Commissioner has confirmed the villages to the descendants of the original grantee. Consequently, the second element would incontrovertibly be said to have been present but for the following circumstances.

8. This leads us to the question as to the effect of the resumption of 15 acres 76 cents by the Government some years before the inam enquiry.

9. As already stated, these lands, which were included in the village and which fell to the share of one Padmanabhacharyulu, were forfeited as he joined the pithuridars prior to 1834 and resumed by the Government Does this affect the real character of the inam village

10. It is convenient at this place to quote in extenso the definition of an "estate" with reference to inams and the relevant explanations:

> " (2) Estate means :

X x x x x

(d) any inam village of which the grant has been made, confirmed or recognised by the British Government notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees."

It must be mentioned here that the word 'British' was deleted by the Adaptation (Amendment) Order of 1950.

Explanation 1:- Where a grant as an imam 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 been already been granted an service or other tenure or been reserved for communal purposes."

11. The effect of this Explanation is that if the grant did not include the entirety of the area in that village, it would still be deemed to be an estate if what was granted was a named village and the other conditions of the Explanation are satisfied.

12. We are unconceraed with Explanation 2 as that deals only with resumption of the whole village.

13. Explanation 3 has a material bearing on this enquiry. It recites :

"Where a portion of an inam village is resumed by the Government, such portion shall cease to be part of the estate, but the rest of the village shall be deemed to be an inam village for the purposes of this sub-clause. If the portion so resumed or any part thereof is subsequently regranted by the Government as an inam, such portion or part shall from the date of such re-grant, be regarded as forming part of the inam village for the purposes of this sub-clause."

14. The point presented by the Counsel for the appellant is that the resumption of a part of the inam village has altered its position and that it has ceased to be an estate. This contention was not advanced in the Courts below but we all wed it to be raised for the first time since it is a question of law. He argues that Explanation 3 has no impact on inam villages, parts of which were resumed prior to the passing of the Madras Estates Land Act and that the explanation comes into operation only in regard to resumption of Inam villages after the Act came into force.

15. Support is sought for this proposition from *Sivarama Sastri v. State of Andhra*[1] That ruling does lend colour to this contention. But what we have to consider is whether the principle underlying that decision is correct. In fact, these matters were placed before the Full Bench as it was thought that this decision required

[1]1958-1-Andh W.R.185 : AIR 1957 And Pra 166

reconsideration. In that case, the whole village of Gorantla was granted in Agraharam by the Vaddera Kings in the year 1133 A.D. in favour of one Malladi Somanadha Somayajulu.

Subsequently, there was a division of this village between the grantee and his younger brother Singarajupriyulu, the southern division falling to the share of Somanadha Somayajulu and the northern portion to Singarajupriyulu. As the latter died without issue, the northern portion was resumed by the grantor, while the southern portion remained in the family of the original grantee. However, it was regranted in the year 1449-50 by one Raja Venkatadri Naidu in favour of Veluri Narayana Somayajilu. At the time of the Inam Commission, the two grants were confirmed and title deeds issued, one for the northern division and the other for the southern division. After the passing of the Estates Abolition Act, the question arose whether this Agraharam was an "estate" for the purposes of that Act. The contention of the inamdars that as part of the village was resumed and re-granted, the confirmation of such a village did not satisfy the definition of an estate within the meaning of Section 3(2)(d) of the Act and that Explanation 3 to clause (d) did not govern villages, parts of which were resumed before the Estates Land Act was passed, found acceptance with the learned Judges, constituting the Bench. They held that, by reason of the resumption of a part of the inam and the re-grant of it, there were two separate grants of the two moieties and that the Inam Commissioner confirmed these two grants and therefore the confirmation was not of the original grant of the entire village but the Inam Commissioner must be deemed to have confirmed only the first grant of half the village.

16. The learned Judges further expressed the opinion that Explanations 2 and 3 bore only on resumptions made subsequent to the passing of the Act. According to them, this result flowed from the expression "such portion shall cease to be part of the estate" in Explanation 3. We feel that this effect cannot be attributed to that clause. We do not think that these words limit the scope of Explanation 2 or 3 in the way indicated by them. In our judgment, the precise import of these words is this. Where there is resumption of a part of the village, that part ceases to be an estate for the purposes of this Act; to put it differently the part resumed is not attracted by the definition of 'estate'. That clause does not imply that what is resumed must be a part of the village, which has already become an estate. It should be borne in mind that the Explanation begins with the words where a portion of an inam village is resumed by the Government'. So, the commencement itself indicates that the legislature was dealing with an inam village. The sentence following that clause is also significant viz., "such portion shall cease to be part of the estate but the rest of the village shall be deemed to be an inam village for the purposes of this sub-clause" (the sub-clause being clause (d)). This in our opinion, gives a clear indication that the Explanation was concerned only with inam villages falling within the purview of clause (d) and the effect of the resumption of inam villages or parts thereof. If the contrary were the intention of the legislature, stress would have been laid on 'estate' both in the beginning and in the latter parts of that explanation.

17. We are convinced that the resumption envisaged in the explanation is that of a part of the inam village and not of the estate. If that were so, the time of resumption has no relevancy in the interpretation of that Explanation. The Explanation does not specify the time of resumption and there is nothing in the terms of the explanation which can legitimately lead to the conclusion that to attract the Explanation the resumption must have been made after the Act. It is couched in general terms without any indication as to the time of resumption. So we find no justification to circumscribe the wide ambit of the language of the sub-clause. There does not seem to be any warrant to read a restriction into it, there being no words to restrict it to resumptions made after the Act.

18. Another pertinent consideration in this behalf is that clause (d) talks only of an inam village, though the inam village mentioned in that clause constitutes an estate. Therefore, the Explanation has relation to inam villages contemplated by that clause. We cannot assume that while clause (d) applied to inam villages, Explanation 3 was intended to cover inam villages, which had become estates by reason of the Act.

19. In this connection, we have also to remember that various amendments were made and Explanations added with a view to benefit the tenants. Hence, the relevant provisions should receive a beneficial construction. We think that the construction placed by us on it will give full effect to the scope of the Explanation.

20. We are supported in this view of ours by the statement of law contained in *Nallathambi v. Perumal Chetty,*[2] that, notwithstanding the resumption of a portion of the village, the rest of the village which continued to be with the grantees, would be deemed to be an inam village even if the resumption of a part was prior to the coming into effect of the Madras Estates Land Act. That principle will be discovered in the following passage :

> "Mr. Srirangachariar, the learned Counsel for the appellants, relied upon the fact that originally the grant was of an entire village. He also relied on Explanation 3 to clause (d) and contended that there was a case of a portion only of an inam being resumed and therefore the rest of the grant shall be deemed to comprise an inara village within the meaning of that Explanation. That would be so if out of a whole village originally granted in inam a portion had been resumed and the remainder allowed to continue to be with the grantees. Then such remaining portion would by virtue of the terms of Explanation 3 be deemed to be an inam village for the purpose of clause (d). But what happened in this case is quite different."

Although it does not appear from this passage that the resumption was after the Act, the resumption in fact in that case was long before the Act or even before the Inam Commission was constituted to investigate into the truth and validity of the grants set up by several of the grantees. In 1958-1 Andh WR 185 : AIR 1957 Andhra Pradesh 166 the learned Judges refused to accept the doctrine embodied in this case on the ground that the observations were only in the nature of obiter. It may be so but we think that the principle stated therein is a sound one.

21. The remarks of Venkatarama Ayyar J., who was a member of the Full Bench in *Bhavanarayana v. Venkatadu*[3]*,* are to a like effect. The relevant passage occurs at

[2]1953-1 Mad LJ 786 : (MR 1953 Mad 813)
[3]1953-2 Mad LJ 748

p.763 (of Mad LJ) : (at pp. 425-426 of AIR) :

> "Starting with the hypothesis that there was at the outset a grant of an entire village as inam, if at the time of the enfranchisement there is resumption by the Government of a portion of the village and the issue of an inam title deed in respect of the rest of it, the latter will be an estate under Explanation 3".

22. For the above reasons, our opinion is that Explanation 3 impinges on inam villages, parts of which were resumed even before the Act came into force and that it is comprehensive enough to take in resumptions of parts of an inam village, irrespective of the date thereof i.e., whether before or after the Act. We are unable to share the view taken by the learned Judges regarding the applicability of the Explanation in 1958-1 Andh W.R.185 : AIR 1957 Andhra Pradesh 166 and we express our respectful dissent from it

23. We may rest our conclusion on the nature of the inam in dispute on the main clause itself. Even independent of the Explanation the village could be brought within the definition of an estate, as the requisites of clause (d) seem to be fully satisfied. The definition contained in clause (d) envisages two conditions, the grant of a whole or named village in inam and a recognition or confirmation of that grant. We think that the confirmation or recognition envisaged by that clause should be of a village as such. A reference to the extract of the Inam Fair Register and the title deeds issued to the grantees in regard to Panasa Nandivada would establish beyond doubt that what was confirmed was the village of Panasa Nandivada as such; in other words the original grant was confirmed. By the time of the Inam enquiry, Panasa Nandivada minus what was resumed was understood to be an inam village. It was that village that was confirmed to the grantees. The entire area that was available for confirmation was the subject-matter of the confirmation. We cannot subscribe to the view that in order to fulfil the definition of 'estate' the total extent of the land comprised in the original grant should be confirmed. The test is whether the confirmation was of the original grant. That seems to be the connotation of the words 'of which the grant has been made confirmed or recognised'. In this connection, it is useful to remember the purpose for which the Inam Commission was constituted viz. to discover whether the inams were true and whether they were granted by persons authorised to do so and to 'protect the reversionary rights of the Government.'

24. In 1953-2 Mad LJ 748 (FB), Venkatarama Ayyar, J. observed that confirmation was only of the act of making a grant and has no relation to the extent of the properties covered by it and if the Government was satisfied that the grant was true and made by a proper person, then it was to confirm it, and if not it was to refuse to confirm and there can be no question of a grant being confirmed in part and disaffirmed in part.

25. The observations of Govinda Menon, J., who was also a member of the Full Bench, at page 758 (of Mad LJ) are to a similar effect:

> "What the section posits is that the grant should be confirmed or recognized and not the area or the extent in existence at the time of the inam settlement."

26. We do not think that *Lakshminarasamma v. Raghavayya*[4], rendered by a Bench of this Court, to which one of us was a party, contains any principle opposed to it. All that was remarked there was that the Inam Commissioner could have confirmed or recognised the grant as it was or rejected it on the ground that no inam was in fact made or not validly made and that it was not for him either to take away from the grant or to add to it. We fail to see how it substantiates the proposition that if the confirmation did not relate to the total area included in the original grant, it falls outside the pale of an estate. The sentence "confirmation is of the act of making the grant

and has no relation to the extent of the properties covered by it" does not convey the thought that the exact area of the original grant should be the subject-matter of the confirmation. This sentence should be read along with the other sentences preceding it and especially those extracted above. In fact, in the earlier part of the paragraph it was stated that the Inam Commissioner could not either add to or subtract from the grant and that he could not do anything in the way of either enlarging or abridging the rights of the inamdar under the grant.

27. *Narasiah v. Estates Abolition Tribunal*[5], does not carry the appellant any further. What was stated by Krishna Rao, J., who spoke for the court in that case, was that two of the conditions for making an inam village an inam estate were that the inam grant or confirmation thereof must have comprised the entire village etc. This sentence does not establish the proposition that the entire extent included in the original grant should also be confirmed to satisfy the requirements of clause (d).

28. In *Somasundaram v. State of Madras*[6], Krishnaswami Nayudu, J. said that if from the title deed it is seen that what was confirmed by the British Government was not the exact area of what had been originally granted but only a remaining portion after deducting certain lands which had gone out of the grantee, either by alienation or otherwise, then the grant would not be an 'estate'. But Subba Rao, J. (as he then was) another member of the Bench seems to have demurred to this proposition and he stated it in a different form. The learned Judge observed that if the entire grant was confirmed or recognised, the process of confirmation or recognition of the fact that different title deeds were issued or the grant was recognised by separate acts should not matter, for in either case, the original grant, which was of the entire village should be confirmed or recognised by the British Government. This observation shows that the view of the learned Judge was that the extent and the nature of the confirmation that was material (sic). Dealing with these remarks, Govinda Menon, J. said that what clause (d) postulated was that the grant should be confirmed or recognized and not the area of the extent in existence at the time of the inam settlement.

29. Further, it should be mentioned that 1952-2 Mad LJ 202 was based upon two judgments of single Judges of the same Court in *Viswanadham Brothers v. Subbaiya,* and *Achyuta Ramayya v. Akkayya*[7],

[4]1958-1 Andh WR 343 [6]1952-2 Mad LJ 202

[5]1955 Andh WR 419 [7]1946-2 Mad LJ (SN) 19: C.R.P. No.727 of 1945

Venkatarama Ayyar, J. in 1953-2 Mad LJ 748 (FB), said that these rulines were erroneous. We assent to this view of Venkatarama Ayyar, J.

30. In the instant case since the grant was of the inam village Panasa Nandivada and the confirmation was of that Agraharam village, the requirements of clause (d) are fulfilled. The fact that a Very small extent of the area of that village could not be included in the confirmation, it not having been available for that purpose, would not make any difference. This view of our is re-inforced by the pronouncement of the Judicial Committee of the Privy Council in *Krishnaswami Ayyengar v. Perumal Goundan*[8], In that case, a whole village was granted in inam by the then rulers in 1795 and a small part of that village was resumed by the Government and granted in ryotwari tenure. The rest of the village continued to be treated as an inam village, which state of affairs continued for nearly 100 years. In 1894, this village was attached by the Government for non-payment of revenue and in 1895 it was sold at an auction to one Srinivasa Ayyar for a sum of Rs. 41,000/- and a few months thereafter a sanad was granted by the

Government of Madras to the purchaser. Their Lordships of the Privy Council decided that the subject matter of the grant of 1895 fell within the terms of Section 3 (2) (d) of the Madras Estates Land Act and that it was not necessary to have recourse to the explanations to the amended definition. In reaching that conclusion, their Lordships took into consideration the fact that the whole village, minus a small part resumed, was recognized as an inam village and that it was irrelevant that the village so granted had once formed part of a larger village and that the important fact was that the grant of 1895 was comprised of what was then regarded as an inam village.

31. The learned Judges in *Srinivasa Ayyangar v. State of Madras*[9], said that this ruling was of no relevancy in that the grant was of the whole inam village by the British Government. Evidently, the learned Judges assumed that it was a grant made for the first time by the Government attracting the applicability of the definition of an estate contained in Section 3 (2) (d) of the Act. No doubt, their Lordships used the words 'grant' and 'sanad' in some places of the judgment. But it is clear from a perusal of the judgment that the grant or sanad was in effect only a sale certificate and that it was the original inam village minus what was resumed in 1795 that was acquired by the purchaser at the Court sale. That this is so appears from the paragraph occurring at page 2 (of Mad LW) : (at pp.106-107 of AIR) :

> "In the year 1894 the inam village of Bairoji was attached by Government for non-payment of revenue and in 1895 it was sold at auction to Srinivasa Ayyar for Rs. 41,000/-. The particulars of the sale have not been included in the record but it was admitted in the High Court that what was sold was the right, title and interest of the inamdars and that there was no condition imposed that the lands should be held by the purchaser on ryotwari tenure."

Again further down, it is stated :

> "In the specification the property sold was described as Bairoji Agraharam –

[8]64 Mad LW 1
[9]1952-2 Mad LJ 314

> entire agraharam with all the rights of the registered holders. The only rights of registered holders were those appearing in the inam register."

Throughout, their Lordships proceeded on the assumption that what was sold to and obtained by the auction-purchaser was only the right and title to the property of the defaulting inamdars, which consisted of the whole of the inam village as originally granted minus what was resumed in the year 1795.

32. The rationale of this decision appears to be that, if what is coveyed or confirmed was understood to be an inam village as such, that would fall within the terms of Section 3 (2) (d) of the Act as amended by the Act of 1936. We think that the instant case falls within the principle of 64 Mad LW 1 . So, even on this basis, the judgment of the courts below could be affirmed.

33. For these reasons, we affirm the judgment and decrees under appeal and dismiss the appeals and revision petitions. There will be no order as to costs.

34. Memorandum of cross-objections : The objections relate to costs disallowed in the court below. The objections are not pressed. Even otherwise, there are no grounds for interference with the order as regards costs, as we are satisfied that this is not a case in which costs should be awarded.
Appeals and revisions dismissed.