

Thiruvavaduthurai Adheenam by Its Adheenakartha Sri La Sri Subramania Pandara Sannadhi Avergal (Died) and His Holiness Sri La Sri Ambalavana Pandara Sannadhi Avergal Present Adheenakartha Thiruvavaduthurai Adheenam Vs. State of Madras by the Secretary to Government, Revenue Department, Fort St. George

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Court : Chennai

Decided On : Aug-18-1969

Reported in : (1970)1MLJ523

Appellant : Thiruvavaduthurai Adheenam by Its Adheenakartha Sri La Sri Subramania Pandara Sannadhi Avergal (Die

Respondent : State of Madras by the Secretary to Government, Revenue Department, Fort St. George

Judgement :

ORDER

A. Alagiriswami, J.

1. The petitioner is Thiruvavaduthurai Adheenam. The petition relates to a notification issued by the Government under Madras Act XXVI of 1963, fixing : the 1st day of October, 1966 as the appointed day on which the provisions of that Act would take effect in relation to the village of Kodarankulam. The petitioner states that the lands were originally leased by the Nawab of Carnatic to one Ragho Pandit, that later the lease was converted into Kattukuthagai, that on the assumption of power by the British Government full assessment was charged annually, and that finally during the Inam settlement the inam tenure was converted into a permanent freehold and title deed 204 dated 10th September, 1864 was issued by the Government. The petitioner's contention is that the inam which has been enfranchised stands on the same footing as ryotwari land, and that the provisions of Madras Act XXVI could not be applied to the village. The contention on behalf of the Government, however, is that the term ' freehold ' in relation to inam is only the conferment of the right of alienation free from the restrictions, that the inam character itself was not abolished, that the word ' freehold ' in inam was used in two different senses,

(1) a freehold in perpetuity subject to the payment of quit rent and

(2) absolute freehold free of all tax whatever was due to the Government, that this is not a case of permanent freehold, that if there was no inam tenure, the title deed would not have-been issued under the rules framed in the Settlement of Inams, and that the contention of the petitioner that the village is not at all an inam is not maintainable.

2. But for the strange arguments advanced in this case, I would not have considered that this matter lends itself to any argument whatsoever in answer to the contentions on behalf of the petitioner. The arguments

ignore the whole course of inam proceedings, the purpose for which the Inam Commission was set up and the result of the activities of the Inam Commission. In the Collection of papers relating to the Inam Settlement in the Madras Presidency, Volume 1, published by the Madras Government in 1948, at page 46, we find minutes by the President of the Board at that time. The minutes contain proposals for settlement of inams, and, with regard to personal inams to which class the inam in this case relates, at page 53, it is stated as follows:

The same course shall be followed in reference to inams of a personal nature. It should first be ascertained whether the title to the inams according to the existing tenure is good; and if this should be established by the production of a valid grant or by evidence of uninterrupted possession for fifty years, it should then be open to the holder either to retain the inam according to his actual tenure, subject to the liability of lapse and without the power of alienation, or to enfranchise it by payment of an annual quit-rent, or a single fixed sum equal to so many years purchase of the quit-rent.

At page 70, we get rules for the adjudication and settlement of the inam lands of the Madras Presidency. These rules are now part of the Board Standing Orders and find a place in appendices to Chapter III of Volume II of the Standing Orders of the Board of Revenue published in 1966. They apply even now to inams not already enfranchised. In the aforesaid collection of papers relating to the Inam Settlement of the Madras Presidency, Volume I, at page 71, we find mentioned that, if the inam is a personal or subsistence grant, it will be confirmed to the holder according to its actual tenure. The conditions upon which this tenure will be commuted into a freehold, according as the inamdar is a descendant of the original grantee and of the registered holder, or has acquired the inam through an alienation, are set forth below. If the present incumbent is a descendant of the original grantee or of the original registered holder, the inam will be continued to him hereditarily, subject to the existing conditions of the tenure. But an option will be given to the inamdar to convert this restricted tenure into a freehold with full powers of alienation by gift, sale, adoption, or otherwise, by consenting to the payment of an annual quit-rent, calculated according to the rates of the reversionary claim of the Government in each case. After the amount of annual quit rent has been once fixed for the enfranchisement of each individual inam, it will be open to the holder to redeem it outright by the payment, at once or at any future time, of a single fixed sum equal to twenty years purchase of the quit-rent. Inams once converted into freeholds in accordance with the foregoing rules will be subject to no further interference on the part of the Government, except such as may be necessary for the punctual realisation of the quit-rent charged thereon; and even this degree of interference may be avoided, at the discretion of the inamdar by the purchase, once for all, of the fee simple of the land by paying a sum equal to twenty times the amount of the annual quit-rent. Inams thus enfranchised, either by the payment of an annual quit-rent, or of a single fixed sum equal to 20 years purchase of the quit-rent, will, like every other description of property be subject to the jurisdiction of the Ordinary Courts of Justice in all questions of disputed right, succession, etc., and they may be mortgaged, sold and transferred in any manner, at the will and discretion of the inamdar subject to the payment of quit-rent, if such is not redeemed. On the validity of an inam being established by inquiry conducted in accordance with the foregoing rules a title-deed will be at once furnished to the inamdar, acknowledging his title to the inam on its present tenure, and specifying the terms upon which this tenure may be converted into a freehold. To say, therefore, that an inam land in respect of which a title deed is issued to the inamdar will continue to be an inam land is meaningless.

3. We then have the report of Mr. W.T. Blair on the entire operations of the Inam Commission. At page 317 it is stated that, when the title to an inam based on length of possession was once established, it was then to be open to the owner of an inam held for personal benefit either to retain the inam according to his actual tenure subject to the liability of lapse and without the power of alienation, or to enfranchise it by payment of an annual quit-rent or a single fixed sum equal to so many years' purchase of the quit-rent. With regard to service inams, those that were attached to services still required were to be continued intact, but where the services were such that they could not be made available for any useful public purpose the value of the public claims on the land was to be calculated in the form of an annual quit-rent commutable, at the discretion of

the holder, for a sum equal to the present value of the annuity. In paragraph 34, the policy behind this arrangement is found. It is stated there that one essential feature of the rules however deserves special notice, viz., the mode of determining the value of the reversionary interest of Government in different cases. Certain rates of quit-rent were proposed to be charged which were estimated to be equal in value to the full assessment of the inam after a certain period of exemption from land tax:

(1) In the case of inams resumable on the death of the present holders either under the terms of the grant, or on account of defect of title, or owing to the holder possessing no lineal heir, the charge was fixed at half the assessment, which was equivalent to the reversion of the inam after a period of fifteen years.

(2) In the case of persons possessed of terminable heirs, such as a widow with a widowed childless daughter, or of other grants confirmed for two lives, half the above rate was to be levied.

(3) In the case of all other hereditary inams where the chance of lapse from failure of lineal heirs could not be calculated with precision a quit-rent of one-eighth of the assessment was considered sufficiently high to protect the interests of the Government and moderate enough to induce the holders to purchase the freehold. This is equivalent to the resumption of the inam after an exemption from land-tax for a period of forty-five years. In all cases it was declared that the inamdars were at liberty to redeem the quit-rent charged on their inams by a single payment equal to twenty years' purchase. Thus enfranchisement, meant commutation of the value of the Government's right of resumption. After that there was no right of resumption and the land was free from the obligations of inam tenure.

4. The Madras Enfranchised Inams Act, 1862 has this preamble.

Whereas under the inam rules sanctioned by Government under date the 9th August, 1859, the reversionary rights of Government are surrendered to the inamdars. In consideration of an equivalent annual quit-rent, and the inam lands are thus enfranchised, and placed in the same position as other descriptions of landed property, in regard to their future succession and transmission It is hereby enacted as follows.

5. Section 2 states that the title deed issued by the Inam Commissioner, or an authenticated extract from the register of the Commissioner or Collector shall be deemed sufficient proof of the enfranchisement of land previously held on inam tenure This will also make the point I have made earlier clear. It may be useful to refer to the Bench decision of this Court in *Gunnaiyan v. Kamackchi Ayyar* I.L.R.(1903) Mad. 339 , where the whole question is discussed as follows:

In my opinion the enfranchisement of village service inams which are one of the descriptions of inams stands on the same footing so far as the family in which the village office is hereditary is concerned. The enfranchisement consists in dis-annexing it from the office and imposing, instead of the full assessment a quit-rent which is generally equivalent to $\frac{5}{8}$ of the full assessment. The resumption by Government, therefore is nothing more than that of $\frac{5}{8}$ of the assessment or melwaram.

Section 2 of Regulation VI of 1831 (now repealed and superseded by Madras Act III of 1895) declared that all emoluments derived from lands annexed by the State to hereditary village and other offices in the Revenue and Police Departments were inalienable from such offices by mortgage, sale, gift or otherwise and all transfers thereof by the holders of such offices were also declared to be null and void. Section 3 of the same regulation barred the jurisdiction of the Civil Courts to entertain claims to the possession of or succession to such offices or to the enjoyment of any of the emoluments annexed thereto and invested the Collector of the district in which the claim has risen or may arise with authority to adjudicate upon such claims. The effect of enfranchising a service inam is clearly declared by Madras Act IV of 1866. Section 1 of that Act enables that a service inam which has been enfranchised from the condition of service by the Inam Commissioner shall be exempt from the operation of Regulation VI of 1831. Section 2 enacts, that the title-deed issued by the Inam Commissioner or an authenticated extract from the register of the Inam Commissioner shall be deemed sufficient proof of the Enfranchisement of the Land previously held on Service Tenure. It is thus made

abundantly clear that the effect of enfranchisement and the issue of a title deed by the Inam Commissioner is simply to exonerate the inam from the condition of service and convert it into ordinary property subject to the payment of a quit-rent and not to resume the same from the family or person entitled to the Hereditary Office and make a fresh grant of the same.

The form of the title deed also makes this clear. The portion of it bearing upon the question runs as follows : 'I acknowledge your title to an inam consisting of the right to the Government revenue on land claimed to be.. acres. This inam being held for service, now otherwise provided for, will be subject to the payment of an annual quit-rent of Rs. ... which is hereby imposed upon it in commutation both of the service and of the reversionary interest possessed by Government in the inam. The inam is now confirmed to you in freehold; in other words, the inam will be your absolute property to hold or dispose of as you think proper, subject only to the payment of the abovementioned quit-rent'. It will thus be seen that after acknowledging the existing title of the grantee to the inam, a quit-rent is imposed upon it in consideration of its being exonerated from the burden of service and of the release, by Government, of its reversionary interest therein. The title deed then declares the consequential result of such enfranchisement viz., that the grantee will thereafter hold the inam in freehold, i.e., like any other ordinary property, he will hold the inam as his own absolute property, which he can dispose of as he thinks proper, subject only to the payment of the quit-rent imposed.

I conclude this discussion by a reference to Board Standing Order 53 found in the Standing Orders of the Board of Revenue, Volume II as to the effect of enfranchisement, which is to the effect that in the case of inams enfranchised by the Inam commissioner, whatever be their previous tenure, there should be no interference on the part of the Collector. These inams stand in the same position as ryotwari lands in respect of succession, transfer, sub-division and sale for arrears of quit-rent. They may also be accepted as security for any purpose in the same manner as ryotwari lands.

6. I shall now refer to another argument based on actual title deed itself, Clause 3 of which is as follows:

On your agreeing to pay an annual quit-rent of Rs. 2,810 inclusive of the Jodi already charged on the land as above-stated, your inam tenure will be converted into a permanent freehold, in which case the land will be your own absolute property to hold or dispose of as you think proper, subject only to the payment of the abovementioned quit-rent.

Clause 4 is to the following effect:

If you should desire to commute the quit-rent for the payment of a sum of money once for all, equal to twenty years purchase of the quit-rent, you will be at liberty to do so.

While under Clause 3 if the title holder agrees to pay an annual quit-rent his inam tenure will be converted into a permanent freehold, in which case the land will be his, own absolute property to hold or dispose of the same as he thinks proper; under Clause 4 if he wants to commute the quit-rent by payment of a sum of money once for all, equal to twenty years purchase of the quit-rent, he would be at liberty to do so. The argument is that, as long as the holder of an enfranchised inam pays the annual quit-rent, there is still some character of the inam attached to that land, but that if he pays the lump sum equal to twenty years purchase of the quit-rent, the land becomes freehold land, and that as it is not the case here, the Government still has the right of reversion. I think this argument is wholly without substance. It is unnecessary to repeat all that I have already stated earlier in order to meet this argument. An inam enfranchised by the payment of annual quit rent or of a single fixed sum equal to 20 years purchase of the quit-rent becomes the absolute property of the title holder. The only difference between the two is that in the latter case there is no liability for annual payment of quit-rent. This right has been specifically conferred on enfranchised inamdars as a result of the Inam Commissioner's proceedings and it is a right which no ryotwari pattadar has but that does not change the character of the tenure. Reference may be made to Macleay's Manual of the Administration, Volume I, published in 1885 where at page 118, in paragraph 119 it is stated as follows:

Perpetual Freeholds.--Absolute and perpetual freeholds have not existed in this Presidency until quite recently, and can now be acquired only by taking the benefit of the rules for redeeming the land revenue, building site quit-rents, and enfranchised inam quit-rents. In regard to the first and second of these modes of redemption it must be observed that inasmuch as land-tax is the main constituent of public revenue it is not allowed to be redeemed universally. It is only allowed in the case of lands occupied for building purposes or intended for garden and plantations of lands in the Neilgherries and the Pulney and Shevaroy hills, and of the coffee lands in the Waynad. In all these cases proprietors are allowed to redeem their land-tax the rate of redemption being twenty-five times the sum annually paid on the land as assessment or quit-rent. The cost of survey and demarcation is borne by the person who redeems the assessment. In Zamindaris the Zamindar alone is given the right to redeem the land revenue. In the case of ryotwai lands the proprietor holding directly from Government has alone the right. Applications for the redemption of land revenue are disposed of by Collectors subject to an appeal to the Board of Revenue. On payment of the redemption money in full, with the cost of survey and demarcation, the party redeeming the assessment is furnished with a title deed in a certain prescribed form. The third mode of redemption shown above introduce the question of the Inam tenures of this Presidency, but as these are described in detail under the head 'Inam Commission', it is only necessary here to mention that Inamdars holding lands enfranchised from service or from Government resumption, but subject nevertheless 'to a quit-rent, may redeem that quit-rent in perpetuity at twenty years' purchase. The class of holders mentioned in this paragraph have of course unlimited powers of alienating, devising or disposing of their land. It will be observed that the freehold is absolute against that demand of the Government only which represents the Governments right to share the produce, and gives no immunity from other Government demands, such as for artificial irrigation, education, or such matters; in all of which cases the land may be subjected to separate cesses or demands. The land also will always be liable to attachment, in the same way as any other land, in the event of its becoming obnoxious to any legal penalty which authorized its attachment or sale. The redemption in (no) way affects sub-tenures, right of occupancy, or other similar rights; and the freedom conferred is absolute only as against Government.

7. Therefore, the commutation or failure to commute under Clause 4 does not make any difference in this case to the character of the tenure. I am satisfied that the Government have no jurisdiction to notify this village under the provisions of Act XXVI of 1963, as it no longer retains its character as inam. The writ petition is allowed and the notification is quashed. The respondent will pay the petitioner's costs. Advocate's fee Rs. 250.

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