*Privy Council Appeal No. 59 of 1935*

The Secretary of State for India in Council, represented by the Collector of Kistna - - - - - - *Appellant*

*v.*

Sri Raja Sobhanadri Appa Rao Bahadur Zamindar Garu - *Respondent*

Same - - - - - - - - *Appellant*

*v.*

Same - - - - - - - - *Respondent*

Same - - - - - - - - *Appellant*

*v.*

Sri Raja Rao Venkata Mahipati Gangadhara Rama Rao Bahadur Zamindar Garu and others - - - *Respondents*

*Consolidated Appeals*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD APRIL, 1937.

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*Present at the Hearing*:

LORD RUSSELL OF KILLOWEN.
LORD MACMILLAN.
SIR JOHN WALLIS.

[*Delivered by* SIR JOHN WALLIS.]

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The main question in all these consolidated appeals from judgments of the Madras High Court is whether the plaintiffs who are zemindars of permanently settled estates are entitled to resume the suit lands which had been held by village karnams or accountants as part of their remuneration and had been enfranchised by the Government under section 17 of the Madras Proprietary Estates Village Service Act II of 1894. From the earliest times, as stated at p. 84 of the Fifth Report, village officers and servants have received, together with other emoluments, grants of land wholly or partially exempted by Government from the payment of land revenue in lieu of wages for their services. In 1894 the Madras Government, having decided to substitute a system of payment by salaries, provided by legislation for the imposition of cesses to meet these salaries; and at the same time took power under section 17 to enfranchise these inams in permanently settled estates, as hereinafter explained.



A

In 1922 the proprietors of the Telaprole and Ventrapragada estates, which are parts of the former permanently settled Nuzvid zemindary, which was partitioned in 1879, instituted a large number of suits in the Courts of the District Munsifs of Nuzvid and Gudivada, the appropriate jurisdictions, disputing the right of the Government to enfranchise the suit lands under section 17 of Madras Act II of 1894, already mentioned, and claiming to recover possession of them under the proviso to that section on the ground that they had been granted either after or before the Permanent Settlement in 1802, by the plaintiffs' predecessors for village service, and that after the enfranchisement the village servants had refused to perform their services. Appeals were preferred from the decrees of the District Munsif of Nuzvid to the Subordinate Court of Bezwada which affirmed the decrees of the Court below decreeing the suits, and from the decrees of the District Munsif of Gudivada dismissing the suits to the Subordinate Court of Masulipatam which dismissed the appeals. From these decrees second appeals were taken to the High Court. In these appeals the learned Judges upheld the contention of the Government that the Government were entitled to enfranchise lands granted to village karnams free of quit-rent prior to the Permanent Settlement because they were within the reservation in respect of lakhiraj lands in section 4 of the Permanent Settlement Regulation XXV of 1802 and allowed the appeals, and dismissed plaintiffs' suits; but in 98 cases, where lands had been so granted subject to the payment of a kattubadi or quit-rent, they held that the Government had no right to enfranchise them under section 17 already mentioned as they were not included in the reservation, and that the plaintiffs were entitled to resume them.

From these 98 decrees of the High Court in second appeal, the Secretary of State for India in Council has preferred these consolidated appeals to His Majesty in Council after obtaining a certificate from the High Court that they were appealable under section 109 (*c*) of the Code of Civil Procedure as involving an important question of law.

In order to see how this question arises their Lordships will refer in the first place to the terms of section 17, and at the same time will deal with the other important question as to its construction raised by the learned counsel for the appellant. This is the first section in Chapter III of the Act which is headed "Enfranchisement of Village Service Inams." The enfranchisement of inams by the Inam Commissioner under the Inam Rules has been going on ever since the sixties of last century, and consists in releasing the lands from service and renouncing the reversionary rights of the State and confirming the inam to the grantee, his heirs and assigns to dispose of as they might think proper subject to the payment of a quit-rent and also, in some cases, of a pecuniary payment. The Inam Statement on which the enfranchisement was based, and the Inam Register which

records and evidences it have often come under the consideration of the Board.

As may be gathered from the section, some village service inams in Government villages, which are by far the most numerous in the Madras Presidency, had prior to the passing of the Act been enfranchised in this way, either under the Inam Rules or other rules made in that behalf, and the section directs that enfranchisements under the Act are to be made in the same way and to be subject to the payment of quit-rent.

Before introducing the new system of remuneration into permanently settled estates, it was considered desirable to take statutory authority for enfranchising these inams with a view to avoiding possible litigation, but that object has been imperfectly attained owing to the way in which the section has been construed in the Courts below.

In construing this section and also the provisions of section 4 of the Madras Permanent Settlement Regulation XXV of 1802, on which so much is found to turn, it is necessary to bear in mind that every inam in the original sense of that term is an alienation or assignment by the State of the land revenue of the specified land and the right to realise it. And in consequence all such lands from the revenue point of view are regarded as "alienated lands" and are so described in the preamble to the Permanent Settlement Regulation ~~XXV~~ XXXI of 1802, whether or not the inam is made subject to the payment of an annual fixed payment under the name of *jodi kattubadi* or quit-rent. Where no quit-rent is reserved the lands are lakhiraj in the sense of being totally exempt from land revenue. Where a quit-rent is reserved these are only partially exempt because the inamdar has to pay the Government part of the land revenue in the shape of a quit-rent. There is in their Lordships' opinion no apparent reason why the power of enfranchisement should have been conferred in the one case and withheld in the other, but that is the effect of the judgments now under appeal.

Section 17 is as follows:—

> If the remuneration of a village-office consists in whole or in part of lands, or assignments of revenue payable in respect of lands, granted or continued in respect of or annexed to such village-office by the State, the Government may enfranchise the said lands from the condition of service by the imposition of quit-rent under the rules for the time being in force in respect of the enfranchisement of village-service inams in villages not permanently settled or under such rules as the Government may lay down in this behalf; such enfranchisements shall take effect from such date as the Government may notify:
>
> Provided that the said enfranchisement shall be applicable to all lands or assignments as aforesaid even though, at the time this Act comes into force, they may not be devoted to the purpose for which they were originally granted.
>
> And provided, further, that any lands or emoluments derived from lands which may have been granted by the proprietor for the remuneration of village service and which are still so held or enjoyed may be resumed by the grantor or his representative.

Under the terms of the section, enfranchisement is authorised where the remuneration of the village service consists of lands "granted or continued in respect of or annexed to such village office by the State," or when it consists of assignments of revenue payable in respect of lands so "granted or continued." As in all these cases the village servants, as part of their remuneration, had been assigned the revenues payable in respect of the lands forming part of their remuneration as well as the lands themselves, and, as such assignments can only have been made by the State, it might appear that all such assignments of revenue must have been made and continued by the State within the meaning of the section, and that it empowered the Government to enfranchise.

It is, however, unnecessary to decide this question as no such case was set up. The Government's case was that the lands "had been continued by the State" within the meaning of the section, as they were not in a position to set up that the lands had been granted by the State, because, as observed by the Board in *Vasireddi Chandra Mouleswara Prasada* v. *Secretary of State* (1935) 62 I.A. 166, "in the case of ancient grants made before 1802 it is well nigh impossible, in the absence of the document granting the property, to discover with any reasonable certainty the date and other particulars of its origin."

To prove the "continuance" of the lands, which is the case set up here, the Government contend that all these village service lands, whether or not subject to a payment of kattubadi or quit-rent, are excluded from the Permanent Settlement by section 4 of Regulation XXV of 1802, which reserves to Government full power of "*continuing or abolishing* them," the lands not subject to quit-rent being *lakhiraj* lands, and the lands subject to the payment of quit-rent falling within the description of "all other lands paying only favourable quit-rents" within the meaning of the section.

The expression "continuing or abolishing" is better suited to the other "articles of revenue" included in section 4 of the Permanent Settlement Regulation than to the two last articles, "*lakhiraj* lands," and "lands paying only favourable quit-rents," but as applied to lands must in their Lordships' opinion be read as meaning continuing the tenure on which the lands were held or abolishing it by resuming the lands. Their Lordships are also of opinion that the word "continued" must have the same meaning in section 17 of the present Act. The framers of the section must have contemplated that continuance would be proved, as it has been in these cases, by reference to the provisions of section 4 of the Permanent Settlement Regulation, and indeed most probably took the word "continued" from that section, so that, assuming lands paying only favourable quit-rents to be included in the reservation in section 4 of the Regulation, their Lordships are of opinion that continuance by the State has been proved in these cases. Whether they

are so excluded from the permanent settlement is the important question in respect of which the certificate has been granted, and their Lordships will give their reasons later for holding that they are excluded.

The learned Judges no doubt took the same view of the meaning of the word "continued" in affirming the right to enfranchise in cases where no kattubadi had been reserved, but those judgments are not included in the record, as they are not the subject of these appeals; and Ramesam J. had already ruled to the same effect in the extract from his judgment set out at page 167 of the report in *Vasireddi's* case.

Assuming that the section 17 of the Act confers authority to enfranchise on the ground that the lands were continued by the State, the next question is what is the effect of the second proviso which has been often construed as entitling the proprietors of estates to resume lands granted for village service by their predecessors prior to the Permanent Settlement, although the body of the section apparently authorises their enfranchisement. That was the construction on which the Board proceeded in the case just mentioned, and it had not been challenged in the argument before the Board on behalf of the Secretary of State who was the respondent in that appeal. It has, however, been explained by Mr. Pringle, who was counsel for the defendant in that case and this, that the objection was to have been taken if the Board had not intimated that the appellant zemindar had failed to prove that the suit lands had been granted by one of his predecessors, and it is quite clear that the Board did not adjudicate upon it. The learned counsel for the appellant have now raised the contention that reading the proviso, as it must be read, in the light of the definitions of "proprietor" and "estate" in section 4 of the Act, the right of resumption by a proprietor is limited in the case of permanently settled estates to grants made by a proprietor of the estate after the Permanent Settlement, that is in this case after December, 1802:—

> "Proprietor means any person in whose name any *estate* is for the time being registered in the office of the collector of the district wherein the *estate* is situated."

The definition of "estate," so far as it is applicable to this case is as follows:—

> "'Estate' means—
>
> "(*a*) any Permanently Settled estate, whether Zemindari, Jaghir, mitta or palaiyam."

Their Lordships have no doubt that this construction of the proviso gives effect to the intention of the legislature. The elaborate provisions in the body of the section, on a careful examination prove to have been specially framed to obviate the necessity of raising the question by whom these ancient grants were made, as already explained. On the other hand, grants made subsequently to the Permanent Settlement by proprietors, who under that settlement are

also assignees of the land revenue are not made by the State, and it is to such grants only that the proviso applies. It is unfortunate that these grants by the zemindar are often spoken of as post-settlement inams, when they are not inams at all as they are not assignments by the State of its land revenue, but are made by persons to whom the State has already assigned the land revenue.

It only remains to deal with the ruling which has been certified by the High Court as involving an important question of law. That question is stated with great precision by Ramesam J. in one of the judgments under appeal which is printed at page 140 of the record:—

> " In the case of both these inams the Subordinate Judge found that the inams are subject to the payment of *kattubadi*. This raises a new question of law. If at the time of the permanent settlement they were subject to *kattubadi* payable to the Zamindar, the Zamindar then representing the Government, the lands cannot be said to be *lakhiraj*. The only question therefore is whether they would come under the second heading in section 4 of the Regulation. Can they be regarded as lands paying only a small quit-rent? What is the effect of the word ' only '? The contention for the Zamindar is that the lands must be subject to one burden only, namely, the payment of light quit-rent. If they are subject to an additional burden, namely, rendering of services, they are subject to two burdens, namely, payment of quit-rent and rendering of services; and such inams do not fall under section 4 of the Regulation and cannot be regarded as excluded from the assets of the Zamindari. The meaning of the word ' only ' was considered by Sankaran Nair J. in *Sri Raja Parthasarathi Appa Rao Bahadur* v. *Secretary of State*, I.L.R. 38 Mad. 620 at page 625. His view is that if the land is subject to two burdens, whatever the nature of the services might be, the land cannot be regarded as excluded from the assets. Tyabji J. expresses a slightly different view at page 628. He thought that if the lands were burdened with services due to the Government, they must be regarded as excluded. We prefer to follow Sankaran Nair J.'s view and hold that the suit inams cannot be regarded as excluded from the Zamindari."

On reference to the report all that Sankaran Nair J. is found to have said on the subject is that the provision in section 4 of Regulation XXV of 1802 as to all other lands paying only favourable quit-rents " obviously does not include lands which are held on condition of paying quit-rent, and *also* on condition of rendering certain services in addition to that rent." Such lands, as Ramesam J. puts it, are thus subject to two burdens, and therefore all service inams which are subject to the payment are not lands " subject only to the payment of favourable quit-rents," and do not come within the reservation in section 4 of Regulation XXV of 1802. Now in the first place, in their Lordships' opinion, it is a fallacy to speak of the imposition of quit-rent in this case as a burden. The karnam in lieu of wages is granted the land, together with an assignment by the State of the land revenues of the land subject to the payment of a quit-rent, that is to say, he is not granted a total but only a partial exemption from the land revenue on the land. Far from being a burden this assignment so limited is part of his remuneration. Secondly it appears to be inadmissible, when the legislature has in the preamble

to Ref XXXI found on the same day

expressed its intention to exclude all alienated land from the Permanent Settlement, to hold that it has sufficiently manifested its intention by the use in a badly drafted section of the words " paying only favourable quit-rents," to exclude from the reservation for no apparent reason the very large class of service inams which are subject to the payment of quit-rent, especially as due effect may otherwise be given to the use of the word " only." The drafting of this section has not escaped criticism, and is so very inferior to the drafting of the rest of the Regulation as to suggest that this section, which combines the provisions of sections 35 and 36 of the Bengal Permanent Settlement Regulation VIII of 1793, was substituted at a later stage for the original draft. The Madras Government had been directed to follow the necessary modification with the terms of the Bengal Permanent Settlement, and as will be seen there were good reasons for thinking that section 36 of that Regulation required some modification in Madras.

Section 4 is in the following terms, the articles of revenue not now in question being omitted.

> " The Government having reserved to itself the entire exercise of its discretion in continuing or abolishing, temporarily or permanently, the articles of revenue included, according to the custom and practice of the country, under the several heads . . . . of lakhiraj lands (or lands exempt from the payment of public revenue), and of all other lands paying only favourable quit-rents—the permanent assessment of the land-tax shall be made exclusively of the said articles now recited."

The corresponding section 36 of the Bengal Regulation is as follows:—

> " The assessment is to be fixed independent and exclusive of all *lakhirjah* lands, whether exempted or not from the *khiraj* (or public revenue) with or without due authority."

In Madras all alienations of land revenue take the form of inams with or without reservation of quit-rent. In these circumstances the framers of the Madras section decided, perhaps not very happily, to retain the use of the word *lakhiraj* for lands without any reservation of quit-rent and so totally exempt from land revenue, and to provide under another " article " for " all other lands paying only a favourable quit-rent," and so only partially exempt from land revenue.

If the Bengal Regulation had been reproduced, it might have been contended that lands paying quit-rents were not lakhiraj not being totally but only partially exempt from land revenue; and it would appear to have been thought desirable to provide expressly that the reservation extended to lands which though not wholly exempt from land revenue paid only favourable quit-rents instead of paying the full revenue. As regards the expression " favourable quit-rents," the word inam means favour, and any quit-rent falling substantially short of the full assessment is a favourable quit-rent. This, in their Lordships' opinion, is a sufficient explanation of the use of the word " only," which

for reasons already given could not receive the construction put upon it for the first time in construing the Act of 1894 now under consideration in the absence of any other possible explanation. Their Lordships are also unable to accept the further contention of the learned counsel for the respondents that the special provisions of the Bengal Regulation as to chakran lands, or lands granted in lieu of wages, can be read into section 4 of the Madras Regulation, and have not been shown any sufficient reason for differing from the findings of the High Court, ~~but~~ in all these appeals the inams were pre-settlement grants ~~not~~ so governed by this ruling.

that | and |

Their Lordships will therefore humbly advise His Majesty that the appeals of the Secretary of State in all these cases be allowed and the decrees of the High Court and of the lower Courts in favour of the respondents be set aside, and the suits dismissed. The respondents will pay the appellant's costs throughout.

(40965—3A) Wt. 8151—17 180 5/37 P. St G. 338

In the Privy Council

THE SECRETARY OF STATE FOR INDIA IN COUNCIL, REPRESENTED BY THE COLLECTOR OF KISTNA

*v.*

SRI RAJA SOBHANADRI APPA RAO BAHADUR ZAMINDAR GARU

SAME

*v.*

SAME

SAME

*v.*

SRI RAJA RAO VENKATA MAHIPATI GANGADHARA RAMA RAO BAHADUR ZAMINDAR GARU AND OTHERS

*Consolidated Appeals*

DELIVERED BY SIR JOHN WALLIS

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