

PETITIONER:
RAJA SOMASEKHAR CHIKKA AND ANR.

Vs.

RESPONDENT:
M. PADURAVATAMMA AND ORS. ETC.

DATE OF JUDGMENT: 22/04/1999

BENCH:
U.C.Banerjee, B.N.Kirpal

JUDGMENT:

KIRPAL, J.

Punganur Estate in Chittoor District in Andhra Pradesh was an impartible estate of which Raja Veera Basava Chikkar Royal Varu was the last Zamindar. The question involved in these appeals by special leave relates to the alienations made by the said Raja of some of the properties which formed part of the said estate.

It is an admitted case that the estate was governed by the provisions of the Impartible Act 1904. Under Section 4 of the said Act the Zamindar had no right to alienate impartible property beyond his life time. The estate was governed by the rule of primogeniture and an alienation under the 1904 Act could, inter alia, be done for the benefit of the family.

In 1908 the Madras Estates Land Act was passed defining the substitution, rights and liabilities of land-holders of ryoti and made declarations of the existence of the occupancy rights of the ryoti. The lands were divided into two classes; [1] ryoti land and ; [2] private land. It is not necessary to consider this Act in great detail because it is not in dispute that the Raja continued to be the Zamindar of the Punganur estate. In 1948 the Madras Estate (Abolition and Conversion into Ryotwari) Act (hereinafter referred to as the 'Abolition Act') was enacted. The said Act was made applicable to the Andhra area and the erstwhile State of Madras so as to provide for the repeal of the Permanent Settlement, the acquisition of the rights of landholders in permanently settled and certain other estates in the Province of Madras, and the introduction of the ryotwari settlement in such estates.

The Punganur Estate was notified under the Abolition Act and taken over by the Government on 7th september, 1965. During his life time the Raja, who died in the year 1965, had alienated various properties to different persons. Some of the alienations were prior to 7th September, 1950, while the others were after the Abolition Act had become applicable to the said estate. After the Raja's death his two sons filed two separate suits, OS No.33 of 1969 and OS No.86 of 1971 in the Subordinate Court, Madanapalle for partition and separate possession of their share after declaring the alienations made by the Raja in favour of the defendants as not being binding on them and for mesne

profits. Their case was that Punganur estate was an impartible estate and alienations made by the last Zamindar prior to 7th September, 1950 were not for legal necessities or for the benefit of the estate and the alienations were valid only during the Zamindar's life time. After his death in 1965 it was claimed that the succession opened and the alienations were not binding on the plaintiffs who, it was submitted, had become tenants of the joint family by virtue of the Abolition Act 1948 and, therefore, they could file a suit for partition and claim their share.

The defendants in their written statement resisted the suit by contending that after its abolition the estate had vested in the Government and the plaintiffs had ceased to have any rights therein and, therefore, they could not question the alienations affected by their father. Some of the defendants submitted that the alienations were for legal necessity or for the benefit of the estate and consequently they were binding upon the plaintiffs. An objection was also raised that since under the Abolition Act the estate vested in the Government the plaintiffs could not claim the properties in the estate to be their own and file the suit for partition. The plaint contained a schedule in which various properties in respect of which partition was sought were enumerated. In respect of some of the items of property the plaintiffs and the defendants entered into a compromise while in respect of some other items the suits were decreed in the absence of any contest by the defendants who were interested in those items. In the present appeals we are concerned only with items (1), (4), (5), (8), (9), (12) and (31).

In respect of properties/items 1, 2 and 12 the trial court held the alienations to be binding on the plaintiffs. Item no.1 was a property in respect of which by a deed dated 6th April 1946 the Zamindar transferred the property to one T. Rangaswamy Chetty under an usufructuary mortgage. This property was then sold to defendant no.5 on 16th December, 1949 for discharging the mortgage debt. Defendant no.5 sold the same to defendant no.6 the said property on 5th September, 1952. The alienation by the Zamindar was upheld by the trial court on the basis that it had taken place on account of legal necessity.

Item no.2 relates to sale of building by sale deed dated 26th April, 1951. The trial court held that a pronote had been executed by the Zamindar and a decree was passed against him in order to pay the decretal amount. The property was sold on 26th April, 1951 and the decretal amount of Rs.1250/- was paid. It was, therefore, held that the sale was binding on the estate.

Items 5 and 8 were vacant pieces of land which were given under an oral gift by the Zamindar to one of his servants on 22nd August, 1946. In respect of these gifts a settlement deed was executed on 29th February, 1952. Item no.8 was a subject matter of further sale on 6th October, 1958. The trial court held that there was nothing to show that the said alienations were for legal necessity and the Zamindar had no right to gift the property, therefore, these alienations were held to be not binding on the plaintiffs.

Item no.9 was a piece of land which was sold on 7th October, 1952 to the village Munsiff. The land was situated in the Enam village but the trial court held that the

alienation of this was not binding on the plaintiffs. Item no.4 was a vacant site which was sold by the Zamindar on 15th September, 1952 and the trial court held that the said sale was also not binding on the plaintiffs. Item no.12 was a building site the sale deed of which was executed by the Zamindar and the plaintiffs' mother, for herself and as mother and guardian of the minor plaintiffs. This sale deed was executed on 25th February, 1959 but the trial court did not give any relief to the plaintiffs because there was no prayer in the plaint for the setting aside of the sale deed.

The plaintiffs as well as the defendants who were aggrieved by the decision of the trial court filed appeals in the High Court. By the impugned judgment the High Court dismissed the appeals of the plaintiffs while the appeals filed by the defendants were allowed. The High Court held, agreeing with the trial court, that the suit properties were part of the impartible estate. It, however, held that with coming into force of the Abolition Act; (1) the landholders could claim the rights only under the said Act and the plaintiffs had no right therein; (2) the totality of the interest vested in the Government and no one else could alienate; (3) the building and the estate first vest in the Government and thereafter may vest in the person who owned them.

The High Court also laid emphasis on the fact that on 17th April, 1955 there was a partition between the Zamindar and his two sons, namely, plaintiffs, by registered document. This deed showed all the ancestral and joint family properties which were existing and were divided on that day. None of the suit properties were included in this document. The High Court, therefore, concluded that the plaintiffs and their father did not consider the suit properties to be joint family properties.

The main contention of the learned counsel for the appellants was that the alienations prior to 7th September, 1950 were invalid as being contrary to the 1904 Act. The properties in question were joint family properties and the Zamindar could not alienate the same. Developing this argument, he submitted that with the promulgation of the Abolition Act 1948 these properties would vest in the original owner and after 1956 Act it would become partible. With regard to the effect of the Abolition Act 1948 the learned counsel submitted that even though all the lands which formed part of the impartible estate would vest in the government under Section 3 of the Act but buildings covered by Section 18 (4) continued to vest in the erstwhile owners and the same would not vest in the government.

The question which, therefore, arises for consideration is that with the promulgation of the Abolition Act which is the property which vests in the Government. The two provisions which are relevant in this connection are Sections 3 and 18 which are as follow:

Section 3: With effect on and from the notified date and save as otherwise expressly provided in this Act - the Madras Permanent Settlement Regulation, 1802, the Estates Land Act, and all other enactments applicable to the estate as such except the Madras Estates Land (Reduction of Rent) Act, 1947, shall be deemed to have been repealed, in their application to the estate; the entire estate (including all communal lands and porambores; other non-ryoti lands;

waste lands; pasture lands; lanka lands; forests; mines and minerals; quarries; rivers and streams; tanks and irrigation works; fisheries; and ferries), shall stand transferred to the Government and vest in them, free of all encumbrances; and the Madras Revenue Recovery Act, 1864, the Madras Irrigation Cess Act, 1865 and all other enactments applicable to ryotwari areas shall apply to the estate; all rights and interests created in or over the estate before the notified date by the principal or any other landholder, shall as against the Government cease and determine; the Government may, after removing any obstruction that may be offered, forthwith take possession of the estate, and all accounts, registers, pattas, muchilikas, maps, plans and other documents relating to the estate which the Government may require for the administration thereof:

Provided that the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is prima facie entitled to a ryotwari patta if such person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta; if such person is a landholder, pending the decision of the Settlement Officer and the Tribunal on appeal, if any, to it, as to whether he is actually entitled to such patta;

the principal or any other landholder and any other person whose rights stand transferred under clause (b) or cease and determine under clause c, shall be entitled only to compensation from the Government as provided in this Act; the relationship of landholder and ryot shall, as between them, be extinguished; ryots in the estate and persons holding under them shall, as against the Government, be entitled only to such rights and privileges as are recognised or conferred on them by or under this Act, and any other rights and privileges which may have accrued to them in the estate before the notified date against the principal or any other landholder thereof shall cease and determine and shall not be enforceable against the Government or such landholder.

Section 18: (1) Every building situated within the limits of an estate, which immediately before the notified date, belonged to any landholder thereof and was then being used by him as an office in connection with its administration and for no other purpose, shall vest in the Government, free of all encumbrances, with effect on and from the notified date.

Every building so situated which, immediately before the notified date, belonged to any such landholder and the whole or principal part whereof was then in the occupation of any religious, educational or charitable institution, shall also vest in the Government, free of all encumbrances, with effect on and from the notified date:

Provided that when such institution ceases to exist, the building shall revert to such landholder, or if he is dead, to his heirs or legal representatives.

Where any building so situated- Which belonged to any such landholder on the 1st day of July, 1947; and (i) which on that date was being used by him as an office in

connection with the administration of the estate, and for no other purpose, or the whole or principal part whereof was on that date in the occupation of any religious, educational or charitable institution has after the 1st day of July, 1947 and before the notified date, been sold or made a gift of, by the landholder, or ceased to be used by him as an office as aforesaid, or ceased to be in the occupation of such institution, the value of the building shall be assessed by the Tribunal in such manner as may be prescribed; and the Tribunal shall pay to the government such value from out of the compensation deposited in its office under Section 41, sub-section (1).

Every building other than a building referred to in sub-sections (1), (2) and (3) shall, with effect on and from the notified date, vest in the person who owned it immediately before that date, but the Government shall be entitled-

in every case, to levy the appropriate assessment thereon; and in the case of a building which vests in a person other than a landholder, also to the payments which such person was liable immediately before the notified date to make to any landholder in respect thereof, whether periodically or not and whether by way of rent or otherwise, in so far as such payments, may accrue due on or after the notified date. In this section, "building" includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto. If any question arises whether any building or land falls or does not fall within the scope of sub-section (1), (2), (3), (4) or (5), it shall be referred to the Government whose decision shall be final, and not be liable to be questioned in any court of law. Any person holding a mortgage or charge on any building referred to in sub-section (1) or sub-section (2) shall, for the purpose of section 42, be a secured creditor and be entitled to priority over any person holding a mortgage or charge subsequently created by the landholder over any part of the estate.

The consequence of the notification of the Estate is dealt with by Section 3 of the Abolition Act. It provides that with effect from the notified date, the entire estate stands transferred to the Government and vests in it free of all encumbrances. But the words "save as otherwise expressly provided in this Act" in the opening part of Section show that the Act could specifically provide for some property of the Estate not being transferred to and vesting in the Government. In other words as per Section 3, the entire estate stands transferred to and vests in the Government save those properties in respect of which the Act specifically provides for others.

Section 18 deals with the "buildings in Estate". Sub-section (1) applies only to a building situated within the limits of an estate. This sub section provides that such building which immediately before the notified date was being used as an office in connection with its (estate) administration, and for no other purpose, then the building shall vest free of all encumbrances with the Government. As a result of this sub section, along with the estate, the building situated within the limits of the estate, but which was being used for office purpose, was also to vest in the Government.

Like sub-section (1), sub-section (2) also deals with the buildings within the limit of the estate but which were, immediately before the notified date, being used only as a principal part for any religious, educational or charitable institution. Such buildings were also to vest in the Government with effect from the notified date. The proviso to this sub-section stipulates that when the religious, educational or charitable institution ceases to exist then the building which was used for the said purpose shall revert to the land holder or, if he is dead, to his heirs or legal representatives.

Sub-section (3) deals with a case where between 1st July, 1947 and the notified date, the buildings which belonged to the land owners and were being used for the purpose mentioned in the sub-sections 1 and 2, had been sold or gifted by the landholder or had ceased to be used as office or to be in occupation of the institution. In such a situation out of the compensation payable to the land holder, the tribunal was to pay to the Government a sum equivalent to the value of the building whose use had been altered after 1st July, 1947.

Sub-section (4), on which strong reliance has been placed by the appellant's counsel, provides that every building, other than the one referred to in sub-sections 1, 2 and 3 shall with effect from the notified date vest in the person who owned it immediately before that date. It, inter alia, provides that the Government shall be entitled to levy appropriate assessment on the said building.

We find that proviso to sub-sections (2) and sub-section (4) of Section 18 contemplates cases where the buildings are to vest in the persons who owned the same immediately before the notified date. This is clear from the language of the said provisions. On the other hand, sub-sections (1) and (2) of Section 18 specify those buildings which are to vest in the Government. If Section 3 had provided for all the properties of the estate to vest in the Government then there would have been no necessity of enacting Section 18 and sub-sections (1) and (2) in particular. The legislative intent, to our mind, clearly seems to be that buildings in the estate and other buildings belonging to it were treated in a manner differently than the rest of the estate. It is for this reason that specific provision regarding buildings was made in Section 18.

A Zamindari estate may include and consist of various types of buildings within and outside the limit of estate. The object of the Act being to provide for acquisition of the rights of the land holder and introduction of the Ryotwari settlement in such estates, i.e., to bring the Zamindari system to an end and distribute the land as a manner indicated in the Act, the buildings of the estate were dealt with in a different manner. When in the opening part of Section 3, the words used are "save as otherwise expressly provided in this Act", the exception to the vesting of the entire estate under Section 3 in the Government is clearly contained in proviso to Section 18(2) and in Section 18(4).

The High Court, in our opinion, was not right in holding that the entire estate including the buildings vested in the Government by virtue of Section 3 of the Abolition Act and the erstwhile Zamindar could not alienate

any property after the estate had been notified and the plaintiffs had no right to challenge the alienations so made on this ground alone.

This Court in *Rajah Velugoti Kumara Krishan Yachendra Vs. Rajah Velugoti Sarvagna Kumara Krishna Yachendra Varu and Ors.* ([1970] (3) SCR 88) has held that in relation to the properties of the estate which had not become vested in the Government by operation of Section 3(b) of the Abolition Act, Madras Impartible Estates Act, 1904 continues to be in force and the properties retain their impartible character. Therefore, in respect of the properties of the estate referred to in the proviso to Section 18(2) and Section 18(4), would continue to be covered by the provisions of Impartible Estates Act, 1904 and the said properties would be unaffected by the enactment of the Abolition Act.

Before dealing with the individual items in dispute in the present cases, it is necessary to determine as to what is the meaning of the word "building" referred to in Section 18(4) of the Act. Sub-section (5) of Section 18 provides that a building includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto. This sub-section seems to indicate that a piece of land on which there is no construction, answering the description of the building would not be covered by Section 18(4). By the inclusive definition of the building in Section 18(5), the site on which a building stands and any adjacent premises occupied as an appurtenance thereto has been included. A vacant site on which a building can be constructed is certainly not covered by the definition of the word "building" contained in Section 18(5). It is with this background that we now proceed to consider, in the light of the interpretation of Sections 3 and 1, the various items which are the subject-matter of these appeals, i.e., items no. 1, 4, 5, 8, 9, 12 and 31 which were described in the schedule to the plaint.

Item No. 1 is a property which was sold by the Zamindar prior to the notified date. The trial court as well as the High Court has held that the sale was for legal necessity. It is not in dispute that according to Section 4 of the 1904 Act, the property which was a part of the impartible estate could be sold by the Zamindar for legal necessity. The finding of fact arrived at by the courts below that this sale was for the purpose of discharging mortgage debt and, therefore, was valid, calls for no interference.

As far as item no. 4 is concerned, the High Court has described this property as "a vacant site and urban terrace house". There was an oral sale in respect of this house on 1st December, 1947 in favour of defendant no. 8. This was followed by a registered sale deed dated 15th September, 1952. The eighth defendant in turn sold this property to the ninth and fifth defendants by registered sale deed dated 15th July, 1967. The trial Court as well as High Court has held that the sale was not for legal necessity. The High Court did not grant any relief to the appellant herein and had set aside the finding of the subordinate judge with regard to this item on the ground that the entire estate had vested in the Government and it was only the Government which could question the alienation by the erstwhile Zamindar. We, however, find that in the plaint of the suit no. OS 86 of 1971 it is stated that the

late Zamindar had executed the two sale deeds in respect of this property for the purpose of establishing a temple of Sai Baba. On the basis that this property did not vest in the Government, being covered by Section 18 (4) then the provisions of the 1904 Act would apply. While Section 4 (1) of the 1904 Act plans restrictions on alienations of impartible estates, sub-section (2) of Section 4 specifies permissible alienations. Clause (a) of Section 4 (2) authorises the proprietor of an impartible estate "to grant sites for public charitable and public religious institutions." The alienations of this property, as far as the Zamindar was concerned, for the purpose of putting up a Sai Baba Temple was clearly covered by Section 4 (2) (a) of the 1904 Act and the alienation is also upheld on this ground.

Items 5 and 8 are described by the High Court as being 'two small sites in Punganur town'. There was, at the time when Abolition Act became applicable, no building on these sites. These plots would not fall within the meaning of the word 'building' and would be outside the scope of Section 18 (4) of the Abolition Act. These sites would, therefore, vest in the Government under Section 3 of the said Act and the plaintiffs would have no right to file any suit in respect thereof.

In respect of items 9 and 31 the High Court held that the relief sought for in the suit was within the jurisdiction of the Tribunal under the Abolition Act. The High Court vacated the Trial Court's findings in regard to these items and left it to the parties to agitate them before the settlement authorities under the Act. In our view this direction of the High Court appears to be correct and calls for no interference.

The alienation of item no.12 was not set aside because the High Court, agreeing with the Trial Court, held that the alienation was by the Zamindar and his wife, in her capacity as guardian of the plaintiffs, who were minors at that time, and as the plaintiffs were thus parties to the alienation they could not challenge the same. This apart, this item was only a vacant parcel of land which was not saved from vesting under Section 18 (4) of the Abolition Act and, therefore, the plaintiffs could not file any suit in respect thereof.

For the reasons above mentioned we find that no relief can be granted to the appellants and the appeals are accordingly dismissed but with no order as to costs.