PETITIONER:
A.T.S. CHINNASWAMI CHETTIAR ETC.

Vs.

RESPONDENT:
SRI KARI VARADARAJA PERUMAL TEMPLE & ANOTHER

DATE OF JUDGMENT22/09/1995

BENCH:
VENKATASWAMI K. (J)
BENCH:
VENKATASWAMI K. (J)
SINGH N.P. (J)

CITATION:
1996 AIR 234 JT 1995 (7) 538
1995 SCALE (5)484

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K. Venkataswami, J.

These three appeals arise out of the common judgment and order made in S.T.A.Nos. 174, 181 and 210 of 1974 on the file of the Madras High Court.

The brief facts leading to these appeals as noted in the High Court judgment are the following :-

The first respondent-temple was the grantee of a minor inam comprising of lands bearing old S.Nos. 173 and 175 of the total extent of 19.58 acres in Pollachi village. The terms of the original grant as such were not available, however, the Inam fair register produced in the proceedings showed that the grant was a devadayam religious inam of a permanent character given rent-free for the support of the temple. The Inam was confirmed in the year 1863 under the title deed No. 161. By the Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963, (hereinafter called the Act) minor inams were abolished and Ryotwari settlement was introduced. The Settlement Tehsildar No. II Gobi Chettipalayam initiated an enquiry for the purpose of grant of a Ryotwari patta under the provisions of the said Act. The appellants herein and also the first respondent temple appeared before the said Settlement Tehsildar and asked for Ryotwari patta to be issued in their favour in regard to the lands in their respective possession. The appellants in particular, contended before the Settlement Tehsildar that the first respondent temple had lost possession of the Inam lands soon after the grant as the lands were alienated by one Thirumalai Ayyan, pujari of the temple in whose favour the Inam Commissioner had conferred the grant. Be it noted that no sale deed by the said individual was produced by the appellants before the Settlement Tehsildar at the time of the enquiry, nor before the appellate authority or before the High Court or even before this Court. Instead the appellants placed strong reliance on a partition deed dated

17.2.1888 between three members of a joint family by name Kuppanna Mudaliar, Marianna Mudaliar and Lakshmana Mudaliar. Placing reliance on the recitals in the said partition deed and also the sale deeds subsequent to the said partition deed executed by the successors-in-interest of the said joint family members, the appellants contended that the temple had lost its title to the Inam lands.

Though the Settlement Tehsildar did not agree with the contention of the appellants that the partition deeds relied on by the appellants could be taken as an alienation by the Inamdar of the lands in question, strangely granted patta to the appellants under Section 8(2) (i) (b) of the Act holding that the appellants were in continuous possession of the lands for more than 12 years before 1.4.1960.

The appellants not satisfied with the grant of patta under Section 8(2) (i) (b) of the Act preferred appeals to the Minor Inam Tribunal (Principal Subordinate Judge) Coimbatore claiming patta under Section 8(i) of the Act.

Before the Tribunal, the appellants contended that what was granted to the temple was only melwaram interest and the appellants alone were rightfully entitled to kudiwaram interest and on the abolition of Minor Inams they alone were entitled to Ryotwari patta.

The Tribunal accepting the case of the appellants granted patta under Section 8(i) of the Act in their favour.

Aggrieved by the grant of patta to the appellants, the first respondent temple preferred further statutory appeals to the High Court which were heard by a Division Bench and the learned Judges disagreeing with the conclusions reached both by the Settlement Tehsildar and the Tribunal reversed their findings and granted patta in favour of the temple.

Aggrieved by the decision of the High Court, the present appeals are filed by the appellants.

Mr. A.T.M. Sampath, learned counsel appearing for the appellants submitted that the High Court ought to have accepted the contention of the appellants raised before it placing reliance on a Division Bench judgment of that Court reported in 1949 (2) MLJ 609 entitled Bagavathi Aiman Temple vs. Krishna Goundar. Learned counsel further submitted that in view of he partition deed of the year 1888, the subsequent sale deeds and continuous possession of the lands, it was established that the appellants were in continuous possession and enjoyment of the lands, and therefore, they must be given Ryotwari patta under Section 8(i) of the Act on the basis of prescription of title to kudiwaram right by adverse possession. He also submitted that the view taken by the Tribunal that the grant in favour of the temple was only of melwaram interest was correct in the facts and circumstances of the case and the contrary finding given by the High Court is not sustainable. In addition to the judgment relied on by the appellants before the High Court, learned counsel placed reliance on two other judgments of the Madras High Court in STA Nos. 21/1976 and 103/1975 entitled Peria Alagunachiamman oil & Ors. vs. The Settlement Tehsildar, Coimbatore & Ors. and Sri Ayirathan Vinayakar Temple Arumughamangalam vs. State of Tamil Nadu & Ors. respectively.

Contending contra, learned counsel appearing for the first respondent Temple invited our attention to Sections 8(2) (i) and 44 of the Act. According to the learned counsel, there is nothing on record to show that the inamdar or any person claiming through him has legally parted with the title to the land. All the documents produced by the appellants were only transactions among the transferees without establishing who the original transferor was. That

being the admitted position, according to the learned counsel, Section 44 of the Act is attracted and the presumption that follows is that the grant in favour of the Temple was both warams/iruwaram. This argument having rightly been accepted by the High Court, according to the learned counsel for the first respondent Temple, there is no case for interference.

Before considering the rival submissions, it will be useful to refer to some of the relevant provisions of the Act. The Act was enacted as per Preamble "to provide for the acquisition of the rights of inamdars in minor inams in the State of Tamil Nadu and for the introduction of Ryotwari settlement in such inams." Section 3(a) explicitly declares inter alia that as and from the appointed day, the provisions of the Act alone shall be applicable to the minors inams and that any other existing law on the subject shall be deemed to have been repealed. Section 3( ) declares that all rights created by the inamdar in or over his inam before the appointed day shall cease and determine as against the Government.

Sections 3(g), 8(i) & (2) and Section 44 read as follows :-

Section 3(g)

"any rights and privileges which may have accrued in the minor inam to any person before the appointed day against the inamdar shall cease and determine and shall not be enforceable against the Government or against the inamdar and every such person shall be entitled only to such rights and privileges as are recognised or conferred on him, by or under this Act."

Section 8(1)

"Subject to the provisions of sub-section (2) every person who is lawfully entitled to the Kudivaram in an inam land immediately before the appointed day whether such person is an inamdar appointed day, be entitled to Ryotwari patta in respect of that land."

Section 8(2) :

"Notwithstanding anything contained in sub-section (1) in the (Tamil Nadu) Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) and in the (Tamil Nadu) Transferred Territory) Incorporated and Unincorporated Devaswoms Act, 1959 (Tamil Nadu) Act 30 of 1959), the following provisions shall apply in the case of lands in an iruvaram minor inam granted for the support or maintenance of a religious institution or for the performance of charity or service connected therewith or of any other religious charity -

(i) where the land has been transferred by way of sale and the transferred by way of sale and the transferee or his heir assignee legal representative or person deriving rights through him had been in exclusive possession of such land;

(a) for a continuous period of

sixty years immediately before the 1st day of April 1960, such person shall, with effect on and from the appointed day, be entitled to a Ryotwari patta in respect of that land;

(b) for a continuous period of twelve years immediately before the 1st day of April, 1960, such person shall, with effect on and from the appointed day, be entitled to a Ryotwari patta if he pays as consideration to the Government in such manner and in such number of instalments as may be prescribed an amount equal to twenty times the difference between the fair rent, in respect of such land determined in accordance with the provisions contained in the Schedule and the land revenue on such land;

(ii) in the case of any other land, the institution or the individual rendering service shall with effect on and from the appointed day, be entitled to a Ryotwari patta in respect of that land."

Explanation :- For the purposes of this sub-section, "land revenue" means the Ryotwari assessment including the additional assessment, water-cess and additional water-cess."

Section 44 :

"In proceedings under this Act relating to any inam granted for the benefit of any religious educational on charitable institution or granted to any individual for rendering service to a religious, educational or charitable institution or for the purpose of rendering any other service it shall be presumed, unless the contrary is proved, that the inam consists not merely of a grant of the melvaram in the land but also the kudivaram therein."

With this background, let us now proceed to consider the cases before us.

As noticed earlier, the Settlement Tehsildar though negatived the contention of the appellants that by reason of the partition deed dated 17.2.1888 and subsequent numerous sale deeds, it must be deemed that the first respondent had parted with disputed lands, has granted Ryotwari patta under Section 8(2) (i) (b) on the ground that the appellants were in possession of the lands in question for a continuous period of 12 years immediately before the 1st April, 1960. This view of the Settlement TEhsildar was rightly set aside by the High Court in view of the admitted fact that the appellants miserably failed to establish that the first respondent temple (inamdar) has transferred the lands by way of sale and mere possession of lands for the said period will be of no avail. It may be pointed out here that the Settlement Tehsildar has rightly held that the first respondent was granted a devadayam religious inam of a permanent character consisting of iruwarams (both melwaram and kudiwaram). This position is also strengthened/supported by the statutory presumption in favour of religious institution like the 1st respondent herein as per Section 44

extracted above especially in the premise of appellants' failure to prove the contrary. Once the position that the first respondent temple was granted both warams, the claim of the appellants that they must be granted Ryotwari patta under Section 8(1) must fail as there is no scope for invoking Section 8(1) by the appellants in view of Section 8(2) extracted above and also on the facts of these cases.

We have seen earlier that the Inam Abolition Tribunal on appeals by the Appellants herein held that the temple was granted only melwaram and the appellants were lawfully entitled to the kudiwaram and therefore, entitled to Ryotwari patta under Section 8(1) of the Act. This view of the Tribunal cannot stand a moment's scrutiny in view of statutory presumption provided in Section 44 of the Act. Further the Tribunal for coming to the above conclusion assumed certain facts which were either not established or substantiated. Therefore, very rightly the High Court set aside that view of the Tribunal. We may also point out that the learned counsel for the appellants before the High Court factually did not support that view of the Tribunal and therefore, advanced arguments claiming title to kudiwaram right based on adverse possession which also did not find favour with High Court. Learned counsel for the appellants reiterated before us the claim for Ryotwari patta on the basis of long and continuous possession coupled with sale deeds following partition deed dated 17.2.1888. Here again, the contention based on adverse possession is misconceived one. After coming into force of the Act, the right, title and interest in minor inam lands vested free from encumbrance with the Government and Ryotwari pattas had to be claimed only under the provisions of the Act not outside the Act. If this position is borne in mind, there will be no difficulty in rejecting the contention based on adverse possession. Further in view of Section 3(g) extracted above, the claim of adverse possession cannot be countenanced.

The High Court has rightly distinguished the case on which reliance was placed by the appellants, namely 1949 (21) MLJ 602 (supra) by pointing out that that was a case which did not deal with a statute like the present Act and High Court was called upon in the present case to consider the grant of Ryotwari patta under the provisions of the Act and not outside the Act. As pointed out earlier, before us two more decisions were cited and we find in both the cases the admitted fact was that the alienation was by the inamdar temple itself. That makes all the difference. Therefore, those decisions will not help the appellants. At the risk of repetition we may point out that it is an admitted fact that the appellants have failed to establish that there was any alienation by the inamdar to enable the appellants to claim Ryotwari patta under Section 8(2). The inam in question, as found earlier, was an inam granted for the benefit of a religious institution and so the statutory presumption provided under Section 44 will come into full play in the absence of the appellants proving anything contrary to get over the said statutory presumption. In this context, the decision relied on by the first respondent before the High Court and also relied on before us reported in Vol. 87 (1974) Law Weekly p. 652, helps the first respondent in sustaining the judgment and order of the High Court. The learned judges have clearly pointed out while considering the provisions of Section 8(2) as follows :-

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> "That provision, in our opinion will not apply to a case of alienee. The policy of the law, as it stood prior to Madras

Act 30 of 1963, was that alienations by way of sale would be null and void. The Madras Hindu Religious and Charitable Endowments Act of 1959 and its predecessors provided for resumption and re-grant of such alienated service inam lands. We have got to approach S.8 in that context. The policy of the law in respect of alienated religious or charitable inam lands is indicated in Sub. S. 2(i) of S. 8. The alienation should have been made by the inamdar and the transferee or his heir, assignee, legal representative or person deriving rights through him should have been in exclusive possession for the period provided by Cl.(a) or Cl.(b). These two clauses lead to different results. If possession with the alienee is proved as coming within the ambit of Cl.(b) subject to payment of consideration to the Government as provided by the Section, patta may be granted to the alienee. Where a religious or charitable inam land had been alienated but possession was not proved as provided in Cl. (i) of Sub. S. (2) of S. 8, the alienee will not be entitled to patta."

Lastly, one argument advanced by the learned counsel for the appellants remains to be dealt with, namely, that in any event, the appellants are entitled to have patta under Section 8(2) (i) (b) as granted by the Settlement Tehsildar even though their claim for patta under Section 8(1) was rejected by the High Court. This was elaborately dealt with by the High Court and while repelling such argument, it observed as follows :-

"The entire scheme and structure of the Act as well as the purpose of constituting the authorities and functionaries under the Act to effectively administer the provisions of this Act and to carry out the principal objective of introduction of ryotwari settlements in the place of the minor inams in the State. In this context, therefore, we do not think that the rules of procedure applicable to trial of suits in courts of first instance and the entertainment of appeals against decree and orders of Courts of first instance provided under the Code of Civil Procedure can at all be regarded as applicable to proceedings under the Act. Mr. Narayanaswami, referred to section 30(3) of the Act which lays down that the Special Appellate Tribunal shall, subject to the provisions of Section 47-A, have the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908 (Central Act V of 1908) when hearing an appeal. He also referred to us Section 46 of the Act which/provides that any order passed by any officer, the Government or other authority or any decision of the

> Tribunal or the Special Appellate Tribunal under this Act in respect of matters to be determined for the purpose of this Act shall, subject only to any appeal or revision provided under this Act, be final. But, we do not regard these provisions in the Act as in any, way restricting or limiting our powers as an appellate Tribunals to determine finally and effectively the question of issue of ryotwari patta or any other matter that may come before us in appeal. Section 46 itself indicates that the orders to be passed by the Special Tribunals and Appellate Tribunal shall not be liable to be questioned in a Court of law, thereby implying that while acting under Section 30 the High Court does not function as a Court of law."

For the above reasons, we hold that the Settlement Tehsildar and the Inam Abolition Tribunal fell into two different types of errors for granting ryotwari patta to appellants under Section 8(2) (i) (b) and Section 8(1) respectively which errors have been removed and set right by the High Court.

In the result, the appeals fail and are accordingly dismissed. However, there will be no order as to costs.