The District Board of West Tanjore, Represented by Its President Vs. the Secretary of State for India in Council, Represented by the Collector of Tanjore

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Court : Chennai

Decided On : Aug-12-1940

Reported in : AIR1941Mad629; (1941)1MLJ378

Appellant : The District Board of West Tanjore, Represented by Its President

Respondent : The Secretary of State for India in Council, Represented by the Collector of Tanjore

Judgement :

Pandrang Row, J.

1. These connected appeals have been argued together and they raise the same point. All ,of them arise out of suits instituted by the District Board, Tanjore against the Secretary of State for India in Council. The suits are for refund of water cess and land cess thereon collected by the Government from the District Board in respect of certain lands in whole inam villages for different faslis. Appeal No. 215 of 2937 relates to the claim for refund of cess for ten years, that is faslis 1333 to 1342 and the claim is for over Rs. 43,000. Appeal No. 95 of 1938 relates to the water cess for fasli 1343 and Appeal No. 216 of 1937 to the water cess for fasli 1344. These suits however do not raise the claim in a general way that is, not on the basis of any proprietory right claimed by the District Board, but on the basis of a certain compromise entered into between the parties in an earlier litigation of 1921., In other words, we have not to decide whether the District Board has the right to irrigate the lands in the villages without payment of water cess, but whether the event that was contemplated in the compromise of 20th September, 1923, (Ex. A) has happened. That event is, to use the words of the compromise, if the Privy Council should decide in any case that may hereafter be taken to it that the decision in the Urlam case is applicable to inam villages.' If this has happened, that is, if the Privy Council has decided in any case taken to it subsequently to the compromise of September, 1923, that the Urlam decision applies to whole inam villages, then the plaintiff's claim in the present suit can be said to be maintainable, subject of course to the decision on the other issues raised in these suits which have not been disposed of in the Court below. The point therefore that arises for decision in these appeals is only this, though it is made the subject-matter of no less than three issues in the Court below, namely issues 6 to 8 which run as follows:

(6) Has the contingency contemplated by the agreement of compromise happened?

(7) What are the true terms of the compromise agreement referred to in the plaint;

(8) What is the effect of the Privy Council decision reported in Secretary of State for India v. Subramania Aiyar 1933 M.W.N. 559 : 64 M.L.J. 715 Has it held that the decision of the Urlam case applies to inam villages as well?

2. It will be seen that according to the plaintiff-appellant the decision of the Privy Council reported in Secretary of State for India v. Subramania Aiyar 1933 M.W.N. 559 : 64 M.L.J. 715 (, that is the decision in Privy Council Appeal No. 119 of 1931 delivered on the 20th February, 1933, held that the decision in the Urlam case applies to whole inam villages.

3. Though the point for decision is comparatively simple and * short, the argument before us has ranged over a wide field, most of which on the appellant's side was intended to show that it follows from the Urlam decision as explained and commented upon in a subsequent case namely, Secretary of State for India v. Subbarayudu (1931) 62 M.L.J. 213 : L.R. 59 IndAp 56 : I.L.R. 55 Mad. 268 , that the decision in the Urlam case is applicable to whole inam villages situated in non-zamindari areas. This argument was however only introductory to the real argument in the case which was no doubt that the actual decision in the Urlam case was applied to inam villages in the case reported in Secretary of State for India v. Subramania Aiyar 1933 M.W.N. 559 : 64 M.L.J. 715 , which will be referred to for the sake of brevity as the Viranvayal case. We are not really concerned in these appeals to decide whether as a matter of fact the principles enunciated in Subbarayadu's case necessarily lead to the conclusion that the decision in the Urlam case which applied to zamindari lands including pre-settlement inams in a zamindari would apply to inam villages in Government ryotwari tracts as in the present case. That question has been decided in the affirmative in more cases than one by this High Court and it is enough to refer in this connection to the cases reported in Yahya Ali Sahib v. The Secretary of State : AIR1928Mad97 , The Secretary of State for India in Council v. Aiyanar Kone : (1935)69MLJ552 and S. A. Nos. 309 and 310 of 1928, which are now pending in appeal before the Privy Council. What we have to decide is not whether as a matter of law it follows from the earlier decisions of the Privy Council in the Urlam case and in Subbarayadu's case that irrigation of lands in whole inam villages in ryotwari tract is governed by the same principles as are applicable to irrigation of lands within zamindari tracts, but whether as a matter of fact a decision to this effect was pronounced in the Viranvayal case. The judgment in the Viranvayal case deals with two points, namely (1) whether the river from which water was taken for irrigation belonged to the Government and (2) whether the water in question was supplied from works constructed by the Government. Both these points were found against the Government. There is no express decision in the judgment to the effect that the decision in the Urlam case applies to inam villages in ryotwari tracts or to put it in a slightly different form, in non-zamindari tracts. There is no reference whatever to the Urlam case in the judgment of the Privy Council in the Viranvayal case. The judgment no doubt refers to Subbarayadu's case as having finally decided the question that where the riparian owner owns the bed of the stream up to the medium filum, the river could not be said to belong to the Government. Or, in other words, if the Government sought to establish that the stream belonged to them, they would have to show that they owned the whole bed of the river. In the Viranvayal case the fact that half the bed of the river up to the medium filum belonged to the inamdar (the Rameswaram Devasthanam in that case) was not denied before their Lordships of the Privy Council who observed at the end of 'the discussion referred to above that:

The claim of the Government to payment of cess therefore failed in that respect and

was not contended for before their Lordships.

4. The pleadings in that suit also show that ownership of half the bed and the demarcation of half the bed as part of the inam village were alleged in the plaint and were not denied by the Government, and indeed, in view of the decision of the Survey authorities which was not attacked by the Government, could not be denied. It is thus clear that the decision of their Lordships of the Privy Council in the Viranvayal case on this point, namely, whether the river belonged to the Government was decided on the only ground that the Government could claim the river to belong to them only if they showed that they owned the whole bed of the river and not on the basis of any grant of lands abutting the river which carried with it easementary or riparian rights as in the Urlam case and in Subbarayadu's case. The contention of the Government has throughout been that the Viranvayal case has not settled the question of the applicability of the decision in the Urlam case to inam villages in non-zamindari areas and in particular to inam villages included in the inam settlement. Their case has been that at the Inam settlement there was no grant by the Government, except where there was a new grant and that in the case of old grants, what the Inam settlement did was merely to recognise the state of things which existed before, and to leave the rights of the inamdars in the same condition as they were before the settlement. This contention is indeed supported by Act VIII of 1869 which is referred to by their Lordships of the Privy Council in Secretary of State for India v. Srinivasachariar (1920) 40 M.L.J. 262 : 48 I.A. 56 : I.L.R. 44 Mad. 421 Their Lordships observed as follows in that case which was a case relating to a shrotriam village:

it was rightly decided by the final Appellate Bench of the High Court that the title deed of the Inam Commissioners conferred no higher title than was originally granted. ' There is language in the Act of 1862 that might possibly be read as having the effect for which the plaintiffs contend, but this was corrected by Act VIII of 1869, and it is now clear that though a larger interest was created, nothing done under the Inam Commission could vest in the inamdars a subject-matter not already belonging to them

5. In the Urlam case itself, vide Prasad Row v. The Secretary of State for India (1917) 33 M.L.J. 144 : 44 I.A. 166 : I.L.R. 40 Mad. 886 their Lordships expressly stated that it was in their opinion unnecessary to consider the terms of the original inam grants or the effect of any subsequent inam settlement. This observation was made when dealing with the inam lands that were included in the subject-matter of that case. The appellant's advocate, Mr. Venkatarama Sastri relies almost entirely on the following sentence or part of a sentence in the judgment of their Lordships of the Judicial Committee in the Viranvayal case: 'The facts in this case were that the temple authorities were riparian owners'; the sentence, however, continues as follows: 'and that they owned the soil of the river ad medium filum'. As observed already, the latter fact is itself sufficient to dispose of the contention that the river in question belonged to the Government which was the point that was being considered by their Lordships. It must also be observed that this sentence immediately follows the following two sentences: 'The first was as to whether this river from which the water was derived for irrigation belonged to the Government. That was a point which had been in controversy in principle for a considerable time in Madras'. Then comes-the sentence extracted above which starts with the words: 'the facts in this case were'. It seems to us that the controversy in principle which had existed for a considerable time in Madras relating to this point was not actually decided in the Virnavayal case because the fact in that case which was established beyond doubt viz., that the inamdar

owned the soil of the river ad medium filum, made it unnecessary for their Lordships to decide this general controversy regarding the ownership of rivers in the Madras Presidency. It seems to us that it is not at all likely that their Lordships of the Judicial Committee decided or intended to decide a controversy of this importance by merely reciting the facts of the case before them; these two facts, and indeed only one of them could furnish sufficient ground for the decision of the point that arose in that case, namely that the temple authorities, i.e., the inamdars, were the riparian owners and that they owned the soil of the river ad medium filum. This statement of fact cannot in our opinion be regarded as a decision of a controversy which had existed in principle for a considerable time in Madras. Nor could it be deemed to decide the controversy which did exist as regards the ownership of rivers and the right to irrigate free of charge between the Government and Inamdars of whole inam villages in non-zamindari areas. Prima facie the decision of that controversy would depend on the character and effect of the Inam settlement and also on the nature of the grant in each case for whenever the question of what passed at the time of an inam grant has to be decided, the particular grant in question has to be looked into and no general rule can be laid down that whenever an inam village is granted, particular rights of property invariably pass to the grantee. It would appear from the statement of the Government in their reply to the District Board (Ex. G.) that in the Viranvayal case the Privy Council gave no ruling as to the applicability of the Urlam decision to whole inam villages, although counsel for the Government was specifically instructed to obtain a ruling on this point. No doubt this particular statement in the Government's order has not been sought to be established by evidence but the statement made by the Government cannot be entirely ignored, though if the judgment of their Lordships in the Viranvayal case contained a clear decision of the point namely, the applicability of the Urlam decision to whole inam villages, the Government's statement contained in Ex. G, could not be given any weight whatsoever. But where the judgment itself so far as it relates to this point is even according to the appellant's own counsel limited to one sentence or is to be found in one single sentence, it becomes necessary to consider whether the Government's statement is not perhaps a statement of what actually happened, because if their Lordships intended to pronounce a decision on this point, they would have done so expressly and after some discussion than in the manner in which it is suggested to us on behalf of the appellant that their Lordships did in the Viranvayal case. We find ourselves unable to assent to the view pressed upon us on behalf of the appellant, namely, that as a matter of fact the decision of their Lordships of the Privy Council in the Viranvayal case reported in Secretary of State v. Subramania Ayyar (1933) 64 M.L.J. 715 : 1933 M.W.N. 559 actually decided that the decision in the Urlam case is applicable to inam villages. In other words, we are not satisfied that the judgment of the lower Court on this point is erroneous.

6. The appeals therefore fail and are dismissed with costs.

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