The State of Madras Represented by the Collector of Tanjore Vs. Kamakshia Pillai and ors.

LegalCrystal Citation : legalcrystal.com/809115

Court : Chennai

Decided On : Sep-04-1959

Reported in : (1960)1MLJ276

Appellant : The State of Madras Represented by the Collector of Tanjore

Respondent : Kamakshia Pillai and ors.

Judgement :

Ramaswami, J.

1. This second appeal is preferred against the decree and judgment of the learned Subordinate Judge of Tanjore in A.S. No. 161 of 1956, reversing the decree and judgment of the learned District Munsif of Tanjore in O.S. No. 158 of 1955.

2. In Kulamangalarn village, which formed part of an estate, there is a poromboke tank in which the ryots of Kulamangalam village have for over a long time been enjoying the right to fish. This village was notified and taken over on 9th December, 1952 under the Madras Act XXVI of 1948. The ryots were prevented from exercising their right to fish in this poromboke tank. Thereupon they filed the suit, out of which this second appeal arises, claiming in the first instance the tank as well as a customary right to fish therein and prayed for a declaration and injunction or in the alternative for recovery of possession. It is not necessary to discuss about the tank situate in S. No. 48/1, because the claim of the plaintiffs has subsequently been confined to asking for a protection of the customary right to fish by means of appropriate reliefs. The learned District Munsif held that the plaintiffs were not entitled to a decree and on appeal the learned Subordinate Judge has granted them a declaration that the plaintiffs (ryots) are entitled to a customary right of fishery in the suit tank and an injunction restraining the State of Madras from interfering with that right. Hence this second appeal by the State of Madras.

3. The controversy as now crystallised may be put as follows : That the Kulamangalam ryots have been customarily fishing in this poromboke tank situate within the ambit of an estate cannot be disputed. It is also said that when the landholder became insolvent the ryots purchased the rights regarding this tank in a public auction from the Official Receiver. This village Kulamangalam has been notified and the Government have taken over the entire estate on 9th December, 1952. Section 20-A(1) of Madras Act I of 1908 directs the Collector to have due regard to any other customary rights of the landholder or the ryots before making any declaration under Section 20-A(1). But on and with effect from the date of notification, Act I of 1908 ceased to apply. The provisions of Section 3(b) of Act XXVI of 1948 are specific and unqualified and unreserved, viz., that the entire estate,

including porombokes, tanks and fisheries shall stand transferred to the Government and vest in them. Now under Act XXVI of 1948 whereas a patta can be applied for by a ryot or a landholder under Sections 11 to 15 of the Act, there is no provision in it for these plaintiffs to apply for a patta for their fishery right and since the rights which they claim are not the creation of the landholder, they cannot get any benefit by way of compensation or otherwise under the provisions of the said Act. Consequently, the plaintiffs have been contending that Madras Land Encroachment Act (Act III of 1905) recognises customary rights and Act XXVI of 1948 does not provide for any remedy or relief for them and therefore it will be appropriate for the civil Court to recognise and declare their rights and grant the reliefs prayed. On the other hand, the contention of the Government was that the plaintiffs should work out their rights, if any, only under the provisions of Act XXVI of 1948, if there are any express provisions in the said Act, and that Act III of 1905 has no application whatsoever to these lands and that the possible remedy is probably a petition to the Board of Revenue and Government under the general provisions of the Board's Standing Orders, since the tract is now ryotwari : vide B.S.O. 18, Rule 1). It would appear that petitions to the Collector have been rejected. But apparently at that stage the petitions were for both the tank S. No. 48/1 as well as the right to fish. It would not preclude them from petitioning again for the recognition of the limited customary right in an appropriate manner permissible under the Board's Standing Orders.

4. Therefore the primary question which arises before us is whether Section 2 of Madras Act III of 1905 applies to this case. Before entering into a discussion of the scope of Section 2 of Madras Act III of 1905, in regard to which the law has become settled, I shall briefly notice the circumstances that led to the passing of that Act.

5. In the case of unauthorised occupation of lands which are the property of Government, it levies from the persons who so occupy what is known as 'penal or prohibitory assessment or charge'. The history of this assessment or charge is this : Originally treating such unauthorised occupations as offences, Government was prosecuting in criminal Courts the occupants thereof, but in 1869, the High Court held that unauthorised occupations were not offences, and that if such holders were to be ousted by Government, they must apply to civil Courts. Thereupon in order to avoid this difficulty, Collectors were authorised to impose prohibitory assessment with a view not to punish the intruder, but to make him quit the land which he had unauthorisedly occupied. To effecuate this object, the assessment was not calculated on the half net or any other principle but was fixed sufficiently heavy to compel the immediate surrender of the land, and it was increased from year to year until such surrender, amounting in certain cases even to one hundred times the ordinary assessment. It was really intended more as a fine than as assessment strictly so called. Government was collecting this assessment as an arrear of land revenue under the provisions of Act II of 1864, and this procedure had been adopted ever since its institution in 1869. The legality of this procedure, however, was questioned in the case of Madathepu Ramaya v. The Secretary of State (1903) 14 M.L.J. 37 : I.L.R. (1903) Mad. 386. In that case the plaintiff put up a shed and pial to his house upon land which was part of a public highway; and Government thereupon imposed and collected from him a prohibitory assessment and also gave him notice that thereafter an enhanced rate would be levied. Thereupon the plaintiff brought a suit, inter alia, for the recovery of the amount collected from him. It was held that the theory under which the land revenue in this Presidency was collected pre-supposed that the person from whom it was collected had an interest in the land and was recognised as landholder by the Revenue Recovery Act, that the prohibitory assessment was levied

from a person not because he was a landholder, not on the basis that he had an interest in the land, but on the footing that he was a trespasser; that therefore, the prohibitory assessment was not an arrear of land revenue so as to attract the provisions of the Revenue Recovery Act, and that the amount collected from the plaintiff should be refunded. To counteract the effect of this decision and to legalise the existing practice, the Madras Legislature intervened and passed Act III of 1905. Though the immediate object of this enactment is to make the imposition of penal or prohibitory assessment legal, occasion has been taken to declare what is Government property. Section 2 declares what it is : see Sundararaja Iyengar's Land Tenures in the Madras Presidency, 2nd edition, pages 172-173, (for Statement of Objects and Reasons, see Fort St. George Gazette, Part IV, dated 23rd December, 1904, p. 595; for Report of the Select Committee, see ibid., dated 27th February, 1905, p. 45; for Proceedings in Council, see ibid., dated 28th February, 1905, p. 75, and ibid., dated 18th April 1905, p. 206. The assent of the Governor-General to this Act was published in the Fort St. George Gazette, dated 6th June, 1905).

6. The sum and substance of the decisions on Section 2 of Act III of 1905 is : Section 2 declares, subject to the saving clauses, that the Government is the owner of certain kinds of property which kinds of property are defined as those which are not the property of any one else and which are enumerated in the section itself. In regard to these unappropriated properties which are declared to be Government property, they are again subjected to the saving clause which declares that the Act does not affect pre-existing rights therein and does not supersede the rights of riparian proprietors. This is not a vesting declaration but a property declaration. The terms of Section 2 also show that this property declaration is with reference to unappropriated properties existing in 1905 and in fact the declaratory Act exhausts itself with this property declaration. It is quite true that subsequently there can be acquisition of title and extinction of title of Government in regard to these lands covered by the provisions of Act III of 1905. But such acquisitions and extinctions of rights will not be under the Act, but will be under other statutes and Common Law of the land. The decisions embodying these principles are : Secretary of State v. Janakiramayya (1911) 23 M.L.J. 109 : I.L.R. (1911) Mad. 354, Kandukuri Balasurya Prasadha Rao v. Secretary of State for India (1917) 33 M.L.J. 144 : L.R. 44 IndAp 166 : I.L.R. (1917) Mad. 886, Secretary of State v. Ambalavana : AIR1918Mad516 , Kandukuri v. The Secretary of State : (1918)35MLJ159 , Chinnappan Chetty v. Secretary of State for India I.L.R. (1918) Mad. 239, Maharaja of Vizianagaram v. Secretary of State for India (1925) 50 M.L.J. 391 : L.R. 53 IndAp 64 : I.L.R. (1925) Mad. 249; Secretary of State v. Alex Pinto : AIR1937Mad212 , Appa Rao v. Secretary of State for India in Council : AIR1938Mad193 .

7. One of the exempted lands under Act III of 1905 is the estate land of which Kulamangalam forms part and which has been taken over under Act XXVI of 1948. It will be seen, therefore, that when Kulamangalam was taken over and became ryotwari land, this tax would not fall within the category of lands declared to be Government property under Act III of 1905, since Section 2 of that Act exempts both estate lands as well as ryotwari lands.

8. The next branch of argument therefore is that this fishery right was not taken when the entire estate vested in the Government on account of two reasons which are put forward, viz., that there can be no vesting unless what is vested is compensated for and this has not been the case here; and secondly, this customary right to fish falls outside the vesting contemplated by Act XXVI of 1948.

9. The line of argument that because the plaintiffs would not be entitled to be compensated and this is the stand taken by the learned advocate for the plaintiffs - and therfore there cannot be a vesting, need not be discussed at great length. The learned Advocate-General has pointed out how this point is concluded by authority, viz., that the principle of giving compensation cannot be invoked in cases of this nature and which was held in Zamindar of Ettayapuram v. State of Madras : [1954]1SCR761 , and Veerappa Chettiar v. State of Madras : AIR1954SC605 .

10. In regard to vesting, the general principle is that fisheries are in their nature mere profits of the soil over which the water flows, and the title to a fishery grows from the right to the soil. But in certain circumstances in regard to private fisheries, the fishery may be severed from the soil. The owner of a private fishery may of course give general permission to the ryots of the village to use the fishery or by reason of ignorance, generosity, good nature, carelessness or indulgence take no steps to prevent the villagers fishing in his fishery; Halsbury's Laws of England, 3rd Edition, Volume 17) page 297 and following. (See Ramnad case) (1953) 2 M.L.J. 537 : I.L.R. (1953) Mad. 1175; Ananda Bahara v. State of Orissa : [1955]2SCR919 , In course of time this would mature into a customary right. But even in such a case what happens is that the right of the owner of the fishery to fish gets extinguished and the rights of the villagers to fish becomes matured and indefeasible. In other words, the customary right claimed in this case is divestative so far as the landlord is concerned and investitive so far as the ryots are concerned. Would this right pass to the Government along with the estate when taken over?

11. That the entire estate vests is made clear by Section 3(b) of Act XXVI of 1948, and the scope of Section 3(b) has been examined in the following decisions : State of Madras and Anr. v. V. Srinivasa Ayyangar : [1955]2SCR907 , Zamindar of Ettayapuram v. State of Madras (1955) 1 M.L.J. 264 Chidambaram Chettiar v. Md. Aliar Rowther (1957) 1 M.L.J. 244 Appanna v. Sri Ramamurthi (1953) 1 A.W.R. 420, State of Madras v. Karuppiah Ambalam (1959) 1 M.L.J. 185, and Sovsai Udayar v. Andiyappan (1959) 1 M.L.J. 195. (See also C.M.P. No. 5156 of 1951; S.A. No. 620 of 1957). This entire estate would certainly comprise the tank and the right to fish which is always held to be immoveable property. In addition, Section 3(g) of Act XXVI of 1948 makes it clear that any rights and privileges which may have accrued in an estate, to any person 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 landholders 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; vide Saraswathi Bai v. Chairman, E.A.T. Madurai : (1956)1MLJ200 , and State of Madras v. Karuppiah Ambalam (1959) 1 M.L.J. 185.

12. The net result of this analysis is that when a land which was an estate and to which the provisions relating to lands permanently settled have ceased to apply and have become ryotwari and to which all enactments applicable to ryotwari lands shall apply - there can be no interregnum as absolute Government property as postulated by Mr. G.R. Jagadisan as the former ceasing and the latter application are simultaneous - the aggrieved plaintiffs should resort to the same remedies as are open to the ryotwari ryots, viz., proceed under the provisions of the Board's Standing Orders, and petition the revenue authorities.

13. Therefore, the conclusion of the learned District Munsif, though for entirely different reasons, that the plaintiffs are entitled to no relief in this suit is correct and

the declaration and injunction granted by the learned Subordinate Judge are totally unwarranted. The deceree and judgment of the learned Subordinate Judge are set aside and the dismissal of the suit by the learned District Munsif is upheld. This second appeal is allowed and in the circumstances we direct that each party do bear his costs throughout.

14. Before parting with this appeal we must place on record our indebtedness to the lucid and informed arguments of the learned Advocate-General which have considerably lightened our labours and enabled us to approach the case from the proper perspective.

15. Before parting with this appeal, I also wish to record that this is a hard case and though hard cases should not be the provocation for laying bad law, this is an eminently fit case for the Government to ameliorate the grievance of the village ryots on application by appropriate reliefs open under the Board's Standing Orders.

Basheer Ahmed Sayeed, J.

16. I have had the benefit of perusing the judgment of my learned Brother, which has just been pronounced. I wish to add a few words of my own.

17. The point that arises for consideration in this second appeal is whether Section 2(1) of the Madras Land Encroachment Act (Act III of 1905) could be applied with retrospective effect to the right that is claimed in the suit out of which this second appeal has arisen. The right involved in this second appeal is a fishery right. According to the decisions of the Court and that of the Supreme Court, the right to fishery has been held to be an immovable property and there is no controversy with regard to the nature of this right. It is also conceded that the fishery right in question is in respect of a tank which is situated in a poromboke land in the estate, which has been notified under Act XXVI of 1948, viz., the Madras Estates (Abolition and Conversion into Ryotwari) Act. It has further been made clear in the course of the arguments that the respondents in this appeal do not claim the right to fishery in this poromboke tank under the provisions of Act XXVI of 1948. They only claim on the other hand that their right remains unaffected by the notification by reason of the operation of Section 2(1) of Act III of 1905, the Madras Land Encroachment Act.

18. Kulamangalam Village, which formed part of an estate, was notified under Act XXVI of 1948, the Madras Estates (Abolition and Conversion into Ryotwari) Act, and it was taken over by the Government on 9th December, 1952. Under Section 3(b) of the said Act XXVI of 1948 the entire estate vests in the Government. It has been argued by the learned Advocate-General that the term 'estate' is used in Section 3(b) as connoting the entire geographical area of the estate, which becomes abolished by operation of the said section, and the entire estate thereafter becomes vested in the Government. Consequently, all the enactments, which are applicable to ryotwari lands, will apply to the estate so notified and vested in the Government, which means that after the vesting takes place, it is taken outside the purview of the Madras Estates Land Act. The land becomes Government land and all the enactments that apply to the Government lands would also operate upon this geographical extent of land since notified and taken over by the Government. Under Section 3(g) of the said Madras Estates (Abolition and Conversion into Ryotwari) Act, any rights and privileges which may have accrued in the estate to any person 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 landholders, 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. This subclause appears to be only an elaboration of the phrase employed in Section 3(b), viz., that the entire estate vests free of all encumbrances in the Government and stands transferred to the Government with the qualification that the person in whose favour any rights and privileges might have accrued in the estate before the notified date will be entitled only to such rights and privileges as are recognised or conferred on him by or under the Act, Madras Act (XXVI of 1948) and nothing more. One of the Acts applicable to ryotwari areas and which may also become applicable to. the estate abolished and taken over by the Government would be no doubt the Madras Land Encroachment Act (Act III of 1905) as laid down under Section 3(b). The purport of this Sub-section (b) of Section 3 is that as a consequence of the notification of the estate with effect on and from the notified date, the Madras Land Encroachment Act and all other Acts applicable to the ryotwari lands will have operation on the lands in the estate since abolished. Therefore, it is only after the abolition and after the vesting has taken place that the enactment, viz., the Madras. Land Encroachment Act of 1905, would come into play so far as the abolished estate is concerned.

19. As against this contention of the learned Advocate-General, the contention of the learned Counsel for the respondents would appear to be that the Madras Land Encroachment Act and particularly Section 2(1) thereof has retrospective effect and by virtue of such retrospective effect the rights and privileges, which have accrued in favour of the respondents prior to the notification, become saved, and not lost by the abolition. If Section 2(1) of the Land Encroachment Act is read along with Section 3(b) and (g) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, it is difficult to see how exactly Section 2(1) of the Madras. Land Encroachment Act would be of any avail to the respondents so as to save their prior rights.

20. Under Act (III of 1905), viz., the Madras Land Encroachment Act, all lands wherever situated except the property of zamindar, pattadar, jenmi etc. are declared to be Government property as on 6th June, 1905, except as may be otherwise provided by any law, subject always to all rights of way and other public rights, easements, etc. of other landowners and to all customary rights legally subsisting. The Madras Land Encroachment Act was a declaratory act and the effect of that legislation was to the effect that what was not any other man's property become the property of the Government as on the date of the legislation coming into force, barring certain rights specified in the said declaratory provision which attach themselves to the land declared to belong to the Government. It is clear that it was not the zamindari estate or the estate of the poligar, or the pattadar or any jenmi that was declared to be the Government property under the Madras Land Encroachment Act. But on the other hand, this category of properties formed the category of excepted properties as could be seen from the language of Section 2(1) of the Madras Land Encroachment Act. The Madras Land Encroachment Act, being a declaratory measure, had already exhausted itself in its scope and application as to the character of the lands when once the declaration was made and all lands barring the excepted lands had become vested in the Government. The vesting by declaration took place in favour of the Government under the said Section 2(1) of the Madras Land Encroachment Act, and only thereafter the situation would arise as to whether any lands so vested in the Government could be lost to the Government by reason of other people claiming rights thereto, which might have accrued in their favour by operation of any law. That is to say, the operation of the Madras Land Encroachment Act or its

application in other words, would arise only after the land has been, declared to have become vested in the Government and not to any state of things prior thereto. In the present case, the estate in question becomes vested in the Government only on and after the date of notification under the Estates Abolition Act. Therefore, the Madras Land Encroachment Act could be made applicable to this estate only on and after the notification takes effect and not to any state of things existing at any prior point of time. That is the effect of the latter part of Section 3(b). Such being the case, the claim of the respondents that under the Madras Land Encroachment Act their rights to any easements or privileges that existed before the abolition are left in tact and without being affected by the Estates Abolition Act seems to be rather unintelligible. When the operation of the Madras Land Encroachment Act could itself arise only after the date of the notification, to say that by reason of Section 2(1) of the Madras Land Encroachment Act the rights, which the respondents had in the matter of fishery in the poramboke tank are reserved to them and that these rights should be accepted and acknowledged by the Government, when the Abolition Act is implemented and worked out, seems to be a very difficult position to understand. No authority has been cited by the learned Counsel for the respondents to support the proposition that retrospective application of any section of the Land Encroachment Act is permissible when the land comprised in the estate itself becomes vested in the Government by reason of a notification under a later Act and only on and from the date of the notification under the said Act, viz., the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. In Madathapu Ramayya v. The Secretary of State for India (1903) 14 M.L.J. 37 : I.L.R. (1903) Mad. 386, and Secretary of State for India v. Maharajah of Bobili (1915) 30 M.L.J. 163, it was held that the Madras Land Encroachment Act got itself exhausted on the day when the declaration took place about the non-excepted lands and no contrary decision has been cited by the learned Counsel for the respondents. The exact scope of Section 2 of the Madras Land Encroachment Act has been dealt with in The Secretary of State for India v. Ambalavana Pandara Sannadhi : AIR1918Mad516 . At pages 421 and 422, Abdur Rahim, J., observed that the scope of the section was only to declare that certain classes of properties, which did not belong to any individual private proprietor belonged to the Government. The decision in Chinnappan Chetty v. The Secretary of State for India I.L.R. (1918) Mad. 239 is also to the same effect. Act (III of 1905) only dealt with non-excepted lands, by declaring them as property belonging to the Government; whereas Act (XXVI of 1948) deals with one category of those excepted lands, i.e., the zamindary estate, which actually falls within Clause (a) of Section 2 of the Madras Land Encroachment Act.

21. Mr. Jagadisa Ayyar, however, argued that what is being claimed by the ryots now is only a customary right, distinct and apart from the ownership of the tank. It is claimed as a right based on long usage, which vests in the respondents as an independent right being dissociated from the ownership of the bed of the tank. He contended that the right is not claimed against any landholder or individual, though it is a right carved out of the landholder's right to the entire tank. According to him, the fishery right claimed was an incorporeal right and it has accrued in favour of the respondents independently of the owner. It is difficult to understand this argument of the learned Counsel for the respondents. The right to a fishery in a tank, the bed of which is not owned by the claimants can be claimed, and enjoyed only as against the owner of the bed of the tank. It cannot hang in the air, and the person, who can object to the right claimed, will be only the owner of the bed of the tank, who is also entitled to the waters in the tank and also to the produce that accrues to him in the tank, unless somebody else has perfected his right thereto by any prescriptive law of

easement. Mr. Jagadisa Ayyar, further argued that by reason of the long usage, the respondents and the zamindar must be deemed to have become co-owners of the tank and the produce thereof, the zamindar owning the bed of the tank and the respondents owning the right to fishery, that is the produce thereof. So, he contended that on the date when the entire estate vested in the Government under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, only that proprietary right in the tank which the zamindar was possessed of would vest and not the fishery right therein, which had ceased to be his. In other words, he argued that the fishery right would not be vested in the Government by reason of the notification, even though the vesting is said to be of the 'entire estate'.

22. Mr. Jagadisa Ayyar pressed into service the preamble to the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, which is to the effect that the legislative measure is enacted 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. He also cited passages in Maxwell on Interpretation of Statutes at pages 44 and 288 in support of the view that a preamble can be a guide to find out the intention of the legislative enactment and its meaning, and also the view that the statutes which encroach on the rights of the subject, whether as regards person or property, are subject to a strict construction so as to respect the rights of the persons. The aim and object of the Abolition Act he argued was only to acquire the rights of the landholders in permanently settled estates and not to acquire the rights of other individuals in the estates. The Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, defines the term 'estate' as a zamindary estate or an under-tenure or an inam estate. The term 'zamindari estate' in turn is defined as (1) an estate within the meaning of Section 3, Clause (2)(a) of the Estates Land Act after excluding therefrom every portion which is itself an estate under Section 3, Clause (2)(b) or Clause (2)(e) of that Act, and (2) an estate within the meaning of Section 3, Clause (2)(b) or Clause (2)(c) of the Estates Land Act, after excluding therefrom every portion which is itself an estate under Section 3, Clause (2)(e) of that Act. I am unable to agree with the learned Counsel for the respondents when he says that what is acquired by the Government under the Abolition Act is not the right of the ryots in the tank for fishing but only the right of the landholder to the tank bed and its waters. This position would be a direct negation of what is sought to be achieved under Section 3(b) and (g) of the Abolition Act.

23. The tank consists of the bed and the fishery rights, and from this the learned Counsel argues that while the bed of the tank alone which belongs to the landholder has been acquired, the fishery right is left in tact as it does not belong to the landholder. He seeks support for this view from the fact that whereas compensation is provided for every other right in the estate acquired by the Government, there is no compensation made payable for the fishery right. If no compensation has been fixed for the fishery right, which is sought to be taken over by the Government under Section 3(b), then it follows that the fishery right is not intended to be acquired. He further argued that though the landholder gets compensation for the entire estate - that compensation does not include compensation for the right to fishery therein, as that right was not that of the landholder. Even if all the rights of the landholder in the tank are sought to be acquired by the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, still in so far as no compensation has been provided for the fishery right, the Abolition Act being an exproprietary statute, it must be deemed that what is not compensated for is not taken over by the Government. That is to say when

no compensation is made payable, there can be no vesting in favour of the Government of anything not compensated for and so a declaration and an injunction against the Government would be quite warranted and justified in the premises. But Mr. Jagadisa Ayyar conveniently forgets the rulings of the Supreme Court in a series of decisions cited by the learned Advocate-General in Zamindar of Ettayapuram v. State of Madras : [1954]1SCR761 , Veerappa Chettiar v. State of Madras : AIR1954SC605 , Ananda Behara v. State of Orissa : [1955]2SCR919 and Muthu Vein v. State of Madras (1954) 2 M.L.J. 636 : I.L.R. (1955) Mad. 233, wherein it has been laid down that the principle of compensation cannot be invoked in support of the contention that what is not compensated for is not acquired by the Government. These rulings do not allow any more scope for an argument like the one now advanced.

24. My learned Brother has discussed in detail the scope and application of the various decisions to the facts arising in this appeal, and it is not necessary for me

25. In the result I agree with my learned Brother that the decision of the learned Subordinate Judge deserves to be set aside and that this Second Appeal should be allowed without any costs. I would also endorse the opinion expressed by my learned Brother that the Government would be doing only justice if the grievance of the ryots is redressed by according suitable reliefs to them in the matter of the right, claimed.