PRIVY COUNCIL.

RAJA VASIREDDI CHANDRA MOULESWARA PRASADA BAHADUR ZAMINDAR GARU,
APPELLANT,

J.C.* 1935, April 16.

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER, RESPONDENTS.

[ON APPEAL FROM THE HIGH COURT AT MADRAS.]

Service tenure—Karnam lands—Enfranchisement by Government—Zamindar's claim to resume—Onus of proof—Grant before permanent settlement—Proprietary Estates' Village-service Act (Madras Act II of 1894), sec. 17.

The appellant brought suits alleging that certain lands within the geographical limits of his zamindari had been granted by his predecessor as inams for karnam service; he contended that the Government had acted illegally in enfranchising the lands under section 17 of the (Madras) Proprietary Estates' Village-service Act, 1894, and that he was entitled to resume the lands free from quit rents imposed upon the karnams by the Government. Both Courts in India found that the lands had been granted to the karnams before the permanent settlement made in 1802.

Held, that the suits failed, because the appellant had not discharged the onus, which was upon him, to prove that the grants had been made by his predecessor, and not by the State before the estate was conferred upon the appellant's predecessor.

It was therefore not necessary to determine whether the grants were made or continued by the State within the meaning of the above section.

CONSOLIDATED APPEAL (No. 28 of 1932) from two decrees of the High Court (February 1, 1928) reversing two decrees of the Subordinate Judge of Bezwada (February 2, 1922).

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* *Present:* LORD ATKIN, LORD WRIGHT, LORD ALNESS, SIR JOHN WALLIS and SIR SHADI LAL.

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In 1909 the Madras Government, acting under section 17 of the Proprietary Estates' Village-service Act (Madras Act II of 1894), enfranchised certain karnam service lands in two villages within the geographical limits of the appellant's zamindari. In 1920 he instituted two suits claiming that the Government had no power to enfranchise the lands, and claiming to resume possession of them free from quit rents which the Government had ordered the karnams to pay. Both Courts in India held that the lands had been granted to the karnams before the permanent settlement.

The facts, and the terms of section 17 of the above Act, appear from the judgment of the Judicial Committee.

The Subordinate Judge made decrees in favour of the appellant. He held that the lands had been granted by the appellant's predecessor for the performance of private karnam services, and that the grants had not been made or continued by the State so as to be within section 17 of the Act.

Appeals to the High Court were allowed and the suits dismissed.

RAMESAM J. was of opinion that the karnam lands had been excluded from the permanent settlement under section 4 of the Madras Permanent Settlement Regulation (XXV of 1802), and that they could be enfranchised under section 17 of the Act of 1894. He said in conclusion:

"The whole conduct of the Government in allowing these offices and emoluments to remain from 1802 up to 1894 shows that they are being continued within the meaning of section 17, and even if an overt act were necessary, the passing of Regulation XXIX of 1802 itself seems to be such an

overt act, not to mention other provisions relating to karnams. But I do not see why merely permitting the karnams to continue in enjoyment of the lands does not amount to continuing within the meaning of section 17."

VENKATASUBBA RAO J. delivered a judgment to the same effect.

Upjohn K.C., *De Gruyther K.C.* and *Subba Row* for the appellant. The suit lands being within the limits of the appellant's zamindari, and not reserved thereout, formed part of his estate and they were granted by the appellant's predecessor for private services. After the settlement the karnams performed some public services, but they remained servants of the zamindar and he still had the right of resumption. The Act of 1894 did not authorize the confiscation of any proprietary right of a zamindar; that is shown by proviso 2. The High Court in holding that the lands were *lakhiraj* lands, and therefore excluded from the settlement by section 4 of Madras Regulation XXV of 1802, misinterpreted the Regulation. The decision of the High Court was based mainly upon its decision as to karnam lands in *Basavaraju Pitchaya* v. *Secretary of State for India*(1), but that conflicts with its earlier decision in *Satracherla Veerabhadra Suryanarayana* v. *Secretary of State* (2). The settlement did not disturb existing titles: *The Collector of Trichinopoly* v. *Lekkamani and others*(3). In *Ranjit Singh Bahadur* v. *Kali Dasi Debi*(4) the Board held that the proprietary interest of a Bengal zamindar extended to lands granted for *chaukidari chakaran* services. *Prima facie* a zamindar's interest extends to all lands within his zamindari. [Reference was made also to *Rajah Sahib Perhlad Sein* v. *Doorgapersaud Tewarree*(5), *Prasad Row* v. *The Secretary of State for India*(6); Fifth Report (Mad. edn.), paragraphs 15 to 18, 22, 25, 26 and Appendix 18; Rules of Inam Commission, 1859, rr. 1, 2, 18, 23.]

Dunne K.C., *Narasimham* and *Pringle* for the first respondent. From 1799 to the Inam Commission of 1859, and on to

(1) (1919) 58 I.C. 713. (2) (1914) 25 I.C. 878.
(3) (1874) L.R. 1 I.A. 282, 313.
(4) (1917) I.L.R. 44 Calc. 841; L.R. 44 I.A. 117.
(5) (1869) 12 Moo. I.A. 286.
(6) (1917) I.L.R. 40 Mad. 886; L.R. 44 I.A. 166.

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1894, the suit lands can be traced in Government records entered in the names of the karnam as inam lands held free from assessment. The presumption is that they were treated at the settlement as *lakhiraj* lands and so excluded under section 4 of Regulation XXV of 1802. The onus of proving that they were included was upon the zamindar and was not discharged : *Raja Lelanund Sing Bahadoor* v. *The Bengal Government*(1), *Joykishen Mookerjee* v. *The Collector of East Burdwan*(2), *Forbes* v. *Meer Mahomed Tuquee*(3), *Hurryhur Mookhopadhya* v. *Madub Chunder Baboo*(4) and *Ranjit Singh Bahadur* v. *Kali Dasi Debi*(5). The judgment in the case last mentioned does not apply, because it was based upon section 41 of Bengal Regulation VIII of 1793 and the Madras Regulation contains no similar provision. Cases cited for the appellant show that it is only *malguzari* lands in the possession of the zamindar at the settlement to which his title is to be presumed to extend. The preamble to Madras Regulation XXXI of 1802 states that the settlement excluded all alienated lands. That karnams were public officers of importance is shown by Madras Regulation XXIX of 1802. The grants were made or continued by Government within the meaning of section 17 of the Act of 1894. Lands in Madras exempt from Government revenue are necessarily lands granted by the ruling power or upon its authority ; the appellant did not prove that the grants were made by his predecessor. Whether the grants were made by the Government or not, they were recognized and continued by the Government.

Upjohn K.C. replied.

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The JUDGMENT of their Lordships was delivered by SIR SHADI LAL :—This is a consolidated appeal from a judgment and two decrees of the High Court of Judicature at Madras dated February 1, 1929, which reversed the judgments and decrees of the Court of the Subordinate Judge at Bezwada and dismissed two suits brought by the plaintiff.

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(1) (1855) 6 Moo. I.A. 101, 119.
(2) (1864) 10 Moo. I.A. 16.
(3) (1870) 13 Moo. I.A. 438.
(4) (1871) 14 Moo. I.A. 152.
(5) (1917) I.L.R. 44 Calc. 841 ; L.R. 44 I.A. 117.

The plaintiff, who has preferred this appeal, is the zamindar of a permanently settled estate called Chintalapatu Vantu (also known as Muktyala), which is situate in the Kistna District of the Madras Presidency. The circumstances which led to the institution of the suits may be shortly stated. The remuneration of the village officers employed in the permanently settled estates and certain other estates within the Presidency of Madras consisted of grants of lands or assignments of revenue payable in respect of lands. This mode of remunerating the services of village officers, which was sanctioned by ancient practice, continued in force for more than a century ; but it was subsequently found to be objectionable. The Government consequently decided to pay, in lieu thereof, certain salaries and allowances in cash, and was empowered by an Act of the Madras Legislative Council called the Proprietary Estates' Village-service Act (Madras Act II of 1894) to establish in each district the village service fund, from which the payment was to be made. The village officers receiving remuneration in cash were no longer entitled to keep the lands which had been granted to them for the performance of their duties, and the statute, therefore, authorized the Government to enfranchise those lands from the condition of service by the imposition of quit rent.

The operative part of section 17, which conferred this authority, is in these terms :

" 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

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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 enfranchisement shall take effect on or after the date fixed in the notification issued under section 19 for the levy of a village service cess."

The section is not happily worded, but there can be little doubt that in the case of a grant of land made or continued by the State in respect of, or annexed to, a village office, it empowers the Government to free the land from the liability of service and to impose instead a quit rent to be paid by the village officer. The Legislature did not, however, intend to deprive a private proprietor of his right to recover the land, if it was granted by him or his predecessor in interest. This is made clear by a proviso to that section, which expressly states 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."

Now, it is common ground that two plots of land, which were situate in the villages of Kisara and Peddavaram, were enfranchised under the aforesaid section; and the orders of enfranchisement were made by the revenue officer in 1908. The lands were in the occupation of two village officers who were called karnams and performed the duties of village accountants or patwaris. Neither of these village officers was ejected from the land, but was allowed to hold it on payment of a quit rent. The appellant claimed both the plots of land to be his property, but his claim was rejected by the revenue officer who conducted the enquiry. After waiting for nearly twelve years, he instituted the present suits to establish

his title to the lands in question. The trial Judge allowed the claim, but on appeal by the Secretary of State for India, the High Court have dissented from that conclusion and dismissed both the suits.

The main question raised on this appeal is whether the lands were granted to the karnams by the appellant's ancestor. This was the ground upon which he based his claim ; and there can be no doubt that, if that ground be established, he would be entitled under the proviso referred to above to recover the property. It is, however, clear, and, indeed, it is not disputed, that it is for him to prove that the grants were made by his predecessor.

In order to establish his title, the appellant had to state when the grants relied upon by him were made ; and before the revenue officer, who conducted the proceedings for enfranchisement, and also in the plaints presented by him to the trial Court, he definitely stated that the grants were made subsequent to the permanent settlement of 1802. Indeed, he attempted to show that the lands were granted in 1834; but the High Court and also the Subordinate Judge find that the attempt has failed, and that, not only is there no evidence to support the allegation of post-settlement grants, but there is ample documentary proof to refute it.

The appellant, having failed to establish that the lands were granted after 1802, shifted his position in the course of the arguments before the Subordinate Judge, and put forward a new ground of claim, namely, that the grants were made before the permanent settlement. The issue which now

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requires determination is whether the lands originally formed part of his estate and were given by his ancestor to the karnams before 1802. On this point he has relied upon certain circumstances, which, in their Lordships' opinion, are inconclusive.

It appears that the disputed property is situated within the geographical limits of the appellant's estate, but that fact would not necessarily lead to the conclusion that the property was originally owned by his ancestor and given by him to the karnams. It is not incompatible with the hypothesis that the grants of the lands had been made by the State to the village officers before the estate was conferred upon the zamindar. Moreover, the lands were exempted from the payment of land revenue before the settlement, and, as held by the High Court, the income derived from them was not included in the assets upon which the permanent land revenue was determined in respect of the zamindari in 1802. The karnams have been in the enjoyment of the rents and profits for more than a century without making any payment either to the State or to the zamindar, and neither the revenue record nor any other document furnishes the slightest indication that the zamindar was, in any way, concerned with the ownership of the property.

The services performed by a karnam are of a public character, but it is argued that the karnams in question have been rendering private services to the zamindar. The documents, upon which this argument is founded, are of a comparatively recent date, and there is no evidence to show that such services were performed at any time before

the settlement, or that the grants were made for rewarding those services. It cannot be disputed that the zamindar is a person of importance and authority in his estate; and if the karnam of a village within the estate does some private work in order to please the landed magnate, he does not thereby cease to be a public officer. Nor does that circumstance necessitate the inference that the land held by him is a grant from a private person.

It is true that in the case of an ancient grant 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; and there can be no doubt that in the present case the duty of proving pre-settlement grants by the appellant's ancestor is a very difficult one to discharge. But the appellant himself has undertaken that task, and he cannot invoke its difficulty in order to relieve himself of the burden.

Their Lordships do not think that the evidence, to which their attention has been invited by the appellant, would, even if it stood unrebutted, sustain the proposition that the lands were granted by his ancestor to the karnams either before, or after, the settlement of 1802. On the other hand, there are circumstances which throw doubt upon the genuineness of his claim. As stated above, it was only a few days before the expiry of the statutory period of limitation that he brought the present suits; and this delay does not show that he was anxious to vindicate his rights of ownership. When he did institute the suits, he founded his title upon post-settlement

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grants, and this allegation has been demonstrated to be wholly wrong. It is clear that he himself was not sure of his ground, and his change of front at the last stage cannot but militate against his claim.

Upon an examination of the arguments presented to them, their Lordships have no hesitation in holding that the appellant has failed to discharge the onus of proving that the lands in dispute were granted to the karnams by his predecessor in interest. On this finding the appeal must fail, and it is not necessary to consider whether the grants were made or continued by the State. Accordingly, their Lordships will humbly advise His Majesty that the appeal be dismissed with costs.

Solicitors for appellant : *Hy. S. L. Polak & Co.*

Solicitor for first respondent : *Solicitor, India Office.*

A.M.T.