Privy Council Appeal No. 35 *of* 1945

Adusumilli Gopalakrishnayya Garu - - - - *Appellant*

v.

The Province of Madras - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD APRIL, 1947

Present at the Hearing:

LORD THANKERTON
LORD DU PARCQ
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD DU PARCQ]

It will be convenient to set out at once the facts relevant to this appeal, and to begin with a statement taken from the appellant's case, the accuracy of which was admitted by the learned Counsel for the respondent.

"The appellant is a Zamindar owning certain lands in Vuyyur. The Vuyyur lands form part of the Nuzvid Zamindari. In 1802, at the permanent settlement, the Government issued a sanad permanently settling the Nuzvid estate under Madras Regulation 25 of 1802. The sanad is in the common form and is referred to by the Board in *Rajah Venkata Narasimha Appa Row* v. *Court of Wards* (1879) 7 I.A. 38, at pp. 46 and 47, and in *Venkata Narasimha Row* v. *Parthasarathi Appa Row* 41 I.A. 51, at p. 54. By the permanent settlement the British Government fixed their demand of jamma or peshkash from the Zamindars for ever and recognised their proprietary rights in their lands."

A considerable part of the appellant's estate has long been under wet cultivation, the present suit being concerned with an area of something over 177 acres which is so cultivated. Before the year 1855 the necessary water came from a tank on the appellant's land, which was known as Vaddicheruvu. There is no evidence to show from what source this tank was supplied. It is certain, however, that the appellant's predecessors in title paid nothing to the Government, as a separate charge, for the water which they used. If that water came from a Government source, it was no doubt paid for in the sense that the jamma payable by the Zamindar must be taken to have included a payment for the right to use the water, which was a right appurtenant to the land.

In 1855 the Government introduced a new system of irrigation in the district which is still in operation. It was described as the Kistna River anicut scheme. Its effects may be assumed to have been generally beneficial, but it resulted in the drying up of the Vaddicheruvu. Whatever were the rights of the Zamindar down to that date, he then plainly suffered loss through the Government's action, and Government therefore agreed to supply water free of charge for the irrigation of such of his lands as were under wet cultivation at that date. These were in extent

about 816 acres in all, and included the 177 acres which are the subject of the present dispute.

At this point it is important to observe that the Kistna anicut system, on which the Zamindar now began to draw, is capable of supplying water only for a single crop. Its channels are closed in February and opened again at the end of May or beginning of June. Water is thus available only for what is called the first crop season. This seasonal supply satisfactorily meets the needs of the cultivator of paddy, a crop for which water is required from June till about December or January. For about 80 years, from 1855 until 1935, the Zamindars relied on the Kistna system for the irrigation of their wet lands. They neither complained that it was inadequate to their needs nor asked for any further supply.

In 1865 the Madras Irrigation Cess Act became law. The material words of sec. 1 of this Act (as it stands since the passing of the Madras Irrigation Cess (Amendment) Acts of 1940 and 1945) are as follows:—

> " Whenever water is supplied or used for purposes of irrigation from any river, stream, channel, tank or work belonging to, or constructed by or an behalf of, the Crown . . . it shall be lawful for the Provincial Government before the end of the revenue year succeeding that in which the irrigation takes place to levy at pleasure a separate fee for such water (hereinafter referred to as the water-cess):
>
> Provided that where a Zamindar . . . is by virtue of engagements with the Crown entitled to irrigation free of separate charge, no water-cess under this Act shall be imposed for water supplied to the extent of this right and no more:
>
> Provided further that a Zamindar . . . shall be liable to pay the water-cess under this Act except to the extent to which he is entitled to irrigation free of separate charge under the first proviso."

The question then arose whether the Zamindar of the day was liable to pay water-cess or was " by virtue of engagements with the Crown entitled to irrigation free of separate charge." In the result the Board of Revenue on the 22nd April, 1876, resolved to approve a recommendation by the Collector, " that the extent claimed by the Zamindar as usual wet, viz., 768 acres, be excepted from water-cess." The decision of the Board was duly communicated to the Zamindar. The Collector had pointed out to the Board that, although the Board's records showed that in 1856 the wet lands on the estate were in extent 816 acres, the claim was in respect of 768 acres only.

Thereafter the Zamindar continued to take the normal supply of water and paid no water-cess. The particular source from which the Board arranged to supply the water was the Ryves Canal, which, in common with the rest of the anicut, yields no water from January to May.

All went well till the year 1934. In that year the appellant, the present Zamindar, used the 177 acres previously mentioned for the cultivation of sugar-cane. Sugar-cane is a crop which requires water in both seasons, and for the first time a request was made for a supply of water in the early months of the year. On the 24th January, 1935, the appellant presented a petition to an officer of the Board in which he said, " Sugar-cane has to be raised in our lands situate under the Sayapuram channel in Vuyyur village. The water of the Ryves canal cannot overflow and irrigate the said lands ", and asked permission to take water from another source, the Chandrayya channel. This was granted, but the Board of Revenue thereupon demanded payment of water-cess to the amount of Rs.1230.11.9. The appellant paid the amount under protest, and began the present suit.

By his Plaint the appellant alleged that he was " entitled to get free supply of water for wet crops raised " on the 177 acres " irrespective of the nature of the crops ", and claimed to recover the amount which, he said, had been illegally charged. It is unfortunate that the facts on

which the appellant relied as the foundation of his right were not set out in the Plaint. The Plaint does not refer in terms to the permanent settlement, or to the 1855 agreement, or to the Board's resolution of 1876. Their Lordships think it desirable to point out that the rule that material facts should be pleaded is no mere technicality, and that an omission to observe it deprives pleadings of most of their value and may increase the difficulty of the Court's task of ascertaining the rights of the parties. The omission in the Plaint in the present case has had the result of leaving the precise ground of the right claimed in some obscurity.

The Plaint made two allegations of fact as to the appellant's requirements in 1934. The first was that the variety of sugar-cane which he cultivated did not require as much water as an ordinary paddy crop would require, and it was proved at the trial, and is now conceded, that the sugar-cane crop would certainly not require more water, in total annual amount, than would have been needed for a paddy crop. This is, however, subject to the qualification that the appellant would have required water for a paddy crop only during the season when water is plentiful, whereas he required it for his sugar-cane crop throughout both seasons. The second allegation, which was that during 1934-1935 no water was supplied for the sugar-cane crop in the second-crop season, was denied in the respondent's written statement and was disproved.

The facts were carefully investigated by the District Munsif, who arrived at the conclusion that the appellant was entitled to recover the sum claimed, mainly on the ground that the quantity of water in fact used was less than would have been required for a single paddy crop. The learned Munsif also considered the question whether sugar-cane, and other crops demanding the same supply of water as sugar-cane, had been grown on the land before 1855. He referred to some evidence, which was certainly scanty and unsatisfactory, to the effect that such crops had been grown before the introduction of the anicut system, and went so far as to say that he did not "see anything impossible or improbable in the Vaddicheruvu having been able to supply the water necessary for the cultivation of these crops."

There was an appeal to the Court of the District Judge, who affirmed the decision of the Munsif, but on a further appeal to the High Court, the matter was remitted to the District Court for clearer findings on two of the issues framed. Counsel for the appellant at their Lordships' Board complained of this order, but in their Lordships' opinion it was a proper exercise of the powers of the High Court. It resulted in a further hearing before a different District Judge, who found on the issues submitted to him, (1) that the appellant was entitled to free irrigation only in respect of one crop season, and (2) that the respondent was accordingly entitled to levy water-cess for the period from January to May during which the appellant used the Government water. The learned Judge found that it was not proved "that sugar-cane crop or a crop extending over a whole year was being raised on the ayacut of Vaddicheruvu", that is to say, during any period prior to 1855, when the anicut put an end to the useful life of the Vaddicheruvu. He added that, assuming that such crops were being cultivated before 1855, the extent of free irrigation conferred by the Government clearly appeared from the resolution of 1876 and was confined to a single crop.

The matter was then considered on appeal in the light of these findings, by a single Judge of the High Court of Madras, Mr. Justice Kunhi Raman. The findings of the District Judge were accepted, and the appeal was dismissed. The appeal to His Majesty in Council has been brought by special leave.

In their Lordships' opinion the decision of the High Court was correct. If the "engagement" relied on is the agreement or undertaking of 1855, it was plainly an engagement which only bound the Government

to supply water from the Kistna anicut system which, as must have been well known to the Zamindar of that date, was incapable of supplying it from February to June. If the resolution of 1876 is to be regarded as the " engagement ", this in terms allowed " irrigation for one crop free of water rate ", and the history of the case makes it clear that the one crop was a crop which required water only between June and December or January. At the hearing before their Lordships Counsel for the appellant preferred to rely on an engagement which he assumed to have been entered into at the permanent settlement. Their Lordships will certainly say nothing which might be taken to weaken or impair those rights which were conferred on the Zamindars by sanads granted at the permanent settlement, which has been described as their charter, but, in the special circumstances of the present case, they are satisfied that the appellant cannot successfully maintain his claim. Much reliance was placed on decisions of this Board, notably on that in what is commonly known as the Urlam case, *Kandukuri Balasurya Row* v. *Secretary of State for India* L.R. 44 I.A. 166. In that case Lord Parker of Waddington, delivering the judgment of the Board, said (at p. 173):—

> " It is enough, in their Lordships' opinion, that the person relying on the proviso shall show an engagement between the Government and himself or his predecessors in title by virtue of which he is, in fact, entitled to water for irrigation (1) from the source from which he is actually irrigating his lands; (2) to the amount of water actually used for such irrigation; and (3) without being subject to a ' separate charge ' for such irrigation."

In order to justify his reliance on the permanent settlement as the source of his rights, the appellant argues that, at its date, he was granted a right to use the water then flowing upon his land from sources controlled by the Government and filling the Vaddicheruvu, and he says further that the total quantity of water which he requires annually for his sugar-cane crop does not exceed the quantity which was then annually available. When this argument is examined, the first difficulty which presents itself is that nothing has been proved as to the sources from which the Vaddicheruvu was fed. Even if their Lordships were prepared to assume that those sources were owned by the Government and that there was thus included in the sanad an engagement to allow the appellant's predecessor in title to use a supply of water equivalent in amount to that hitherto enjoyed, the question would remain whether the Zamindars have not agreed to accept, in satisfaction of that engagement, the supply which they have received without complaint, for so long a period of time, from the Ryves canal, which is part of the anicut system. In 1855 the appellant's predecessor in title appears to have been content with the arrangement which was then made, and for 80 years no question was raised as to the adequacy of the supply. It has not been established that the Vaddicheruvu provided water for a longer period of the year, or more abundantly, than the anicut system, and the more probable inference from the facts proved is that it did not. In these circumstances it was natural enough that the Zamindar should accept an assured supply from the Ryves canal in substitution for such right to irrigation as he may previously have had, and the history of the case seems to their Lordships to indicate that he did so. In their Lordships' opinion, therefore, the appellant can derive no assistance, in the special circumstances of this case, from the sanad granted at the permanent settlement. It follows that the charge made for water supplied from sources other than the Ryves canal in the year 1934-5 was a proper charge.

For these reasons their Lordships will humbly advise His Majesty that the appeal should be dismissed. The appellant must pay the respondent's costs of the appeal.

(57919) Wt. 8013—20 160 5/47 D.L. G. 338

In the Privy Council

ADUSUMILLI GOPALAKRISHNAYYA GARU

v.

THE PROVINCE OF MADRAS

DELIVERED BY LORD DU PARCQ

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