

**(1959) 11 KL CK 0024**

**High Court Of Kerala**

**Case No:** O.P. No"s. 365/57 and 66 of 1958

Harska Trust

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

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**Date of Decision:** Nov. 20, 1959

**Acts Referred:**

- Edavagai Rights Acquisition Act, 1955 - Section 13, 8(1)

**Citation:** (1960) KLJ 112

**Hon'ble Judges:** T.K. Joseph, J; M.S. Menon, J

**Bench:** Division Bench

**Advocate:** T.N. Subramonia Iyer, S. Subramonia Iyer in O.P. 365/57 and T.S. Venkiteswara Iyer in O.P. 66/58, for the Appellant; C.S. Ananthakrishna Iyer for Respondent 3 in O.P. 365/57 K.V. Surianaryana Iyer Advocate-General for Respondents 1 and 2 in O.P. 365/57, T.N. Subramonia Iyer, S. Subramonia Iyer, P.R. Balachandran Government-Pleader for Respondents 1 and 2 in O.P. 66/58, P.V. Garudeswara Iyer for Respondent 3 in O.P. 66/58, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

M.S. Menon, J.

Both these petitions question the validity of a levy of the basic tax under the Land Tax Act, 1955. O.P. No. 66 of 1958 is on behalf of the Poovarani Devaswom to which the lands belong in jenm and O.P. No. 365 of 1957 is by the tenant of the Devaswom in respect of those lands. The lands were situated within the Poonjar Edavagai and the claim for non-liability stems from that situation. The first Act relating to Edavagais which we need consider is the Travancore Edavagai Act, 1109. That Act was passed in order to provide for the settlement and better administration of certain Edavagais. One of the Edavagais covered by the Act was the Poonjar Edavagai.

2. The settlement of the lands with which we are concerned was effected in pursuance of the Act, and the completion of the settlement was notified under sub-section (1) of section 6. Sub-section (2) of section 6 of the Act provides:

Every settlement made in pursuance of this Act shall, subject to the provisions thereof, be in force for thirty years from the date of its taking effect and shall be liable to be revised thereafter".

It is common ground that the settlement in this case will expire only by the end of Karkadakam 1144.

3. Basic tax was first introduced by the Travancore Land Tax Proclamation, 1121. Section 6 of the Proclamation provided that the Proclamation shall not be applicable to certain classes of lands. One of those classes was "Freeholds (Adhikara Ozhivus) belonging to the Edavagais of Edapally, Kilimannor, Vanjipuzha and Poonjar".

4. The next enactment was the Travancore-Cochin Land Tax Act, 1955, which came into force on 1-4-1956. That Act was amended by the Travancore-Cochin Land Tax (Amendment) Act, 1957. The amendments effected are not material to this case. The short title of the Act now is the Land Tax Act, 1955.

5. Section 17 of the Land Tax Act, 1955, specifically repealed the Travancore Land Tax Act, Proclamation, 1121. The Act provides no exemption from tax to lands situated within the Edavagais.

6. The Edavagais were petty kingdoms or principalities which remained independent or quasi-independent until the consolidation of Travancore in the 18th century. They were outside the State Ayacut and paid no land tax. The Chiefs, however, in exercise of their ancient sovereign powers, collected Melvaram or Melvara Rajabhogam from the jenmis inside the Edavagais (See 1945 T.L.R. 581 and 728).

7. The rights of the Poonjar Chief were acquired by the State under the Edvagai Rights Acquisition Act, 1955, which came into force on 1-1-1956. "Edavagai rights" is defined in section 2(5) of that Act as follows:

"Edavagai rights" means all the rights and privileges vested in the Edapally Swaroopam, the Kilimannoor Kottaram, the Poonjar Koickal and the Vanjipuzha Matom relating to their respective Edavagais and includes in the case of the Poonjar Koickal the right to receive Melvaram in respect of lands situate within the Edavagai of Poonjar".

8. Sub-section (1) of section 3 of the Act provided that, on and from its commencement, the privileges of the Edapally Swaroopam and the Poonjar Koickal relating to Excise Revenues of the Edavagais of Edapally and Poonjar shall stand extinguished, and sub-section (2):

All the Edavagai rights of the Edapally Swaroopam and the Poonjar Koickal, other than those mentioned in sub-section (1), and all the Edavagai rights of the

Kilimanoor Kottaram and the Vanjipuzha Matom over their respective Edavagais, and all rights, title and interests vested in the Chiefs, in respect of waste lands or thanathu lands which have been assigned by them on Kuthagapattom or other like demises, and all rights, title and interests vested in the Chiefs, in respect of waste lands or thanathu lands which have not been so assigned by them are hereby acquired by Government, and all such rights, title and interests shall vest in Government free of all encumbrances".

Sub-section (2) of section 4 fixed the compensation payable by the Government to the Edavagais for the acquisition of the rights, title and interests mentioned in sub-section (2) of section 3 at "the amounts as specified in the Schedule, being 8 times the annual income of the respective Edavagais less five per cent for collection charges". It is clear from these provisions that what was acquired was the Chiefs' rights and it is difficult to understand how the acquisition of those rights can possibly affect the right of the State to tax the lands concerned.

9. The right to basic tax is in no sense, a manifestation of the Chiefs' right to Melvaram. It is a right founded on the Constitution and not on the acquisition of the rights of the Edavagais.

10. Taxes within the jurisdiction of the State are enumerated in the Second List of the Seventh Schedule. "Land Revenue" is entry 45 of that List.

11. The taxing power is one of the fundamental powers of Government. It knows no limits except those embodied in the Constitution, and no tax within the power conferred can be struck down on the ground that it appears to the judicial mind as unwise or unjust. These are propositions which admit of no dubiety.

12. It is true that the State had not imposed any land tax till now in respect of these lands. That does not mean that the State had lost its right to do so.

13. It is not contended that the right has been lost or limited by prescription or on the theory of a lost grant. Such a contention was raised by the appellant in AIR 1937 P.C. 271. The Board came to the conclusion that a prescriptive title to exemption was unavailable in that case and said :

But the appellant submits that, in the circumstances, a lost grant should be presumed and that this lost grant should be presumed to have contained an exemption from land revenue or a "right in limitation of the right of Government" to assess the property. The law may presume the existence of a grant which has been lost where it is sought to disturb a person in the enjoyment of a right which he and his predecessors have immemorially enjoyed, but it is a different thing to seek to presume that the Crown has by some lost grant deprived itself of the prerogative power to tax the property of its subjects, and their Lordships are of opinion that this plea is untenable."

14. We must also remember that statutes in derogation of sovereignty are very strictly construed. As stated by Sutherland :

General words or language of a statute that tends to injuriously encroach upon the affairs of the Government receive a strict interpretation favourable to the public, and, in the absence of express provision or necessary implication, the sovereign remains unaffected. The rule has as its origin the English common law immunity of the Crown, at first attached to the personal character of the King as the sovereign, and later extended to other sources of law-making, and law-enforcing power."

(Statutory Construction, 3rd Edition, Vol. 3, page 183)

15. Counsel for the petitioners drew our attention to the provision in section 13 of the Edavagai Rights Acquisition Act, 1955, to the effect that the repeal of the Travancore Edavagai Act, 1109, shall not affect the previous operation of that enactment or "anything duly done or suffered thereunder". According to them, the issue of the Patta under that Act in respect of these lands was something "duly done" and the repeal of the Act cannot in any way affect the right granted under that Patta, namely, the right to continue in possession of the lands till the end of 1144 on payment of Rs. 2,665/- (about) per year as against the basic tax now demanded of over Rs. 12,000/- per year.

16. It is settled law that if a right has been acquired by virtue of a statute, it is not necessarily taken away by the repeal of that statute (See AIR 1950 Patna 505). What the argument fails to note is the fact that it is not the repeal of the Travancore Edavagai Act, 1109, which attracts the basic tax to these lands but the positive provisions embodied in the Land Tax Act, 1955. But for Section 8 (1) of the Edavagai Rights Acquisition Act, 1955, both the basic tax and the Melvaram would have been payable. That sub-section restricts the claim to basic tax. It reads as follows :

On and from the first day of April 1956, every registered holding in an Edavagai shall be deemed to be a holding registered under Government, and every registered land-holder thereof shall be deemed to be a registered holder and pattadar under Government, and the holding shall be liable to basic tax imposed by Government, from time to time, in lieu of the rent assessed thereon at the settlement of the Edavagai".

17. We are unable to hold that the impugned imposition of the basic tax is in any way ultra vires of the powers of the State under the Constitution or violative of any legal right vested in the petitioners before us. It must follow that these petitions have to be dismissed and we do so with costs, Advocate's fee Rs. 100/- in each of the two petitions. Counsel for the petitioner in O.P. No. 66 of 1958 expressed some doubt as to the period for which the basic tax has been demanded. The Advocate-General submitted that we may make it clear that the notice issued relates to the first instalment of the tax payable for the financial year which commenced on the 1st April 1956 and ended on the 31st March 1957. We do so.