
(1970) 07 MAD CK 0023
In the Madras High Court

A. Chinnaswami Gounder

APPELLANT

Vs

The Director of Settlements and Others

RESPONDENT

Date of Decision : 02-07-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1971) 84 LW 333 : (1971) 1 MLJ 235

Hon'ble Judges : K.S. Palaniswamy, J

Bench : Single Bench

Judgement

K.S. Palaniswamy, J.—These petitions have been filed under Article 226 of the Constitution to quash the order of the Board of Revenue,

Madras, in its proceedings B.P. Perm. No. 596 of 1968 dated 24th September, 1968. The relevant facts are these. The village of Laddivadi in

Namakkal taluk, Salem District, was notified and taken over by the State under the Madras Estates Abolition Act, 1948, in January, 1951. The

final settlement was introduced in Pasli 1369. Patta was granted to A. Chinnaswami Gounder in respect of S. Nos. 40/1 and 40/2. There were

some proceedings with regard to this issue of patta. It is unnecessary to refer to all those proceedings except the relevant proceedings. The

Assistant Settlement Officer, Salem, in his proceedings directed the registry of the fields to be divided into three subdivisions Section Nos. 40/1,

40/2 and and 40/3 and directed the issue of patta in respect of the first two subdivisions in favour of A. Chinnaswami Gounder and directed the

registry of S. No. 40/3 as battai poramboke. Against that order, A. Chinnaswami Gounder filed a revision before the Settlement Officer who

cancelled the said order and restored the original subdivisions as S. Nos. 40/1 and 40/2 and ordered the registry for both these items to be entered

in the name of A. Chinnaswami Gounder. Against that order, one P. Chinnaswami Gounder and some others residing at Kanavaipatti in Laddivadi

village and claiming right of way over the pathway, filed a revision before the Director of Settlement. The Director of Settlement allowed the

revision and restored the order of the Assistant Settlement Officer, with the result S. No. 40/3 was directed to be sub-divided and registered as

battai poramboke. Against that order, A. Chinnaswami Gounder filed a revision before the Board of Revenue impleading the said P. Chinnaswami

and others as respondents and prayed for patta in his name in respect of the entire extent. On a consideration of the evidence, the Board found that

what A. Chinnaswami Gounder purchased was the land west of the pathway, that the pathway was in use even prior to 1908 and that, as such, the

said A. Chinnaswami Gounder had no title to the land which was being used as pathway from time immemorial and had no right to claim patta u/s

11(a) of the Estates Abolition Act. In that view, the Board rejected the revision petition. But the Board observed that there was a kuttai in S. No.

40/2 belonging to the said A. Chinnaswami Gounder, that water from the said kuttai was being taken to irrigate the adjacent land of A.

Chinnaswami Gounder by having a vent under the pathway and that ends of justice would be met if the claim of A. Chinnaswami Gounder to S.

No. 40/3 was recognised u/s 19-A of the Abolition Act. By virtue of the powers conferred under the said section the Board has purported to

direct that the said A. Chinnaswami Gounder be allowed to remain in occupation of the land in S. No. 40/3 subject to payment of tharam

assessment and to the following further conditions:

(i) that he should allow the public to use the pathway as was done hitherto;

(ii) that he should maintain the pathway in good condition; and

(iii) that the Government reserve their right to resume the land at any time without notice and at the occupant's risk, if any of the conditions are

violated.

2. Aggrieved by the said order, the said A. Ghinnaswami Gounder has filed W.P. No. 1543 of 1969. His contention is that the Board should have

granted patta to him in respect of the entire extent. Aggrieved by the decision of the Board as regards the directions u/s 19-A, the said P.

Ghinnaswami Gounder has filed W.P. No. 1654 of 1969. His contention is that

once it is found that the land in question is a pathway and is being used as such from time immemorial, it continues to be communal land, that the Board had no jurisdiction to permit its occupation by anybody, that the order of the Board has placed the villagers entitled to use the pathway at the mercy of A. Chinnaswami Gounder and that, therefore, the said order is liable to be quashed.

3. Mr. Srinivasan, appearing for the writ petitioner in W.P. No. 1543 of 1969 was unable to place any materials before me to call for an

interference with the order of the Board refusing to grant patta to the said petitioner. The Board had ample materials to come to the conclusion that

the portion divided as S. No. 40/3 has been used as a pathway from time immemorial. The very documents on which A. Chinnaswami Gounder

relied in support of his claim for patta referred to the land in question as a pathway and as being one of the boundaries. Having regard to that

important circumstance and also having regard to the admission of A. Chinnaswami Gounder that the pathway was in existence from time

immemorial, the Board rightly negatived his claim to the issue of patta in his name. It was for that obvious reason that Mr. Srinivasan did not

advance any argument with regard to that part of the order of the Board. But what he contended was that the order passed by the Board

permitting his client to be in occupation of the pathway subject to the conditions imposed by it, may be allowed to stand as it does not affect the

rights of the villagers. His submission was that the writ petitioner P. Ghinnaswami, who has prayed for the setting aside of that part of the order

cannot be said to be a person aggrieved by the order of the Board and that, therefore, the said writ petition is unsustainable To meet this objection,

Mr. Vedantachari appearing for the said P. Chinnaswami Gounder, submitted that once it is conceded that the land in question is a communal land

and is being used as such by the community, the Board had no jurisdiction to permit any individual to be in occupation of it, though the said

permission is subject to certain conditions. His submission was that such occupation is permissible only if the communal land falls into disuse as a

communal land and that only in case of such disuse, permission could be granted u/s 19-A.

4. Section 19-A of the Abolition Act reads thus:

19-A(1). Except where the Government otherwise direct, no person admitted by a landholder into possession of any communal land or forest or

other land which is not a ryoti land, shall be entitled to any rights, in or to remain in possession of, such land:

Provided that nothing contained herein shall apply to lands for which the landholder is entitled to ryotwari patta under Sections 12, 13 or 14.

(2) A direction under Sub-section (1) allowing any person to remain in possession of any such land may specify-

(i) the assessment or ground-rent payable to the Government on the land for each fasli year commencing with the fasli year in which the estate is

notified, and

(ii) such special terms and conditions, including the period for which such person may remain in possession of the F land as the Government may

consider necessary in the public interest.

Explanation.--In this section, "communal land" means any land of the description mentioned in Section 3, Clause (16), Sub-clause (a) or Sub-

clause (b) of the Estates Land Act.

5. The question arose before a Bench of this Court in a batch of writ appeals, *A. Ramaswami Chettiar v. The Board of Revenue (S.E.) Madras*

and *Ors. W.A. No. 132 of 1962* and batch decided on 12th January, 1965, as to the circumstances under which persons could be admitted into

possession of communal land u/s 19-A. There, the land in question was said to be a Muslim burial ground. But the evidence established that it had

long ago ceased to be used as a burial ground. Several persons had taken alienations of portions of the burial ground under the genuine belief that

they were dealing with the land under the private ownership of the vendor and had erected buildings under the bonafide belief that their vendor had

acquired valid title from the zamindar. Though the land in question had ceased to be used as a burial ground, no order of the District Collector as

required u/s 20-A of the Estates Land Act, 1908, had been passed to the effect that the land was no longer required for a communal purpose but

could be converted into ryoti land of the landholder. In those circumstances, the Bench held that mere disuse or non-use cannot obliterate the

category of the land under the Estates Land Act. In adverting to the position under the Abolition Act, this is what the Bench said:

As far as the Abolition Act is concerned, Section 19-A would appear to us to have been enacted, upon the same principle as Section 20-A(i)(b)

of the Madras Estates Land Act, and to provide for the same kind of situation. We think that the proper procedure in such cases is for the

Government to give a direction, that the person admitted into possession of a part of communal land, may be permitted to continue in such

possession, where the facts justified this and the property has either long ago ceased to be put to that communal purpose, or is unlikely to be ever

put to such purpose in future.

It would follow from the above observation that if a communal land continues to be communal land and is being used as such, it would not be

within the jurisdiction of the Government to give a direction u/s 19-A to any person in possession of such land to continue in possession, even

though such permission is subject to conditions contemplated therein. The reason is obvious. Once the existence of the need for the use of the land

as a communal land is recognised, it would be against the very character of the communal land to allow a person to be in occupation though such

permission may be subject to conditions. Communal land should be available for use of the community in the customary way. No one can be put in

exclusive possession because such exclusive possession would one way or the other affect the rights of the community at large in the use of the

land. Therefore, so long as the land continues to be communal land and is being used as such, the Government have no power u/s 19-A to permit

any person to be in occupation, even if such permission is granted subject to conditions. In this view, I hold that the Board, after having found that

the land continues to be a communal land and is being used as such by the villagers, had no jurisdiction to give the direction u/s 19-A permitting its

occupation by A. Chinnaswami Gounder, the owner of the lands on either side of the pathway. It may be that the said A. Chinnaswami Gounder is

taking water to his land on one side of the pathway through a vent fixed in the bund. But that can hardly be a ground to permit him to be in

occupation of the communal land.

6. In the result, I dismiss W.P.No. 1543 of 1969 and allow W.P. No. 1654 of 1969 and quash that part of the order of the Board allowing A.

Chinnaswami Gounder to remain in occupation of S. No. 40/3. There will be no

order as to costs.