

(1974) 04 MAD CK 0023
In the Madras High Court
Case No : Writ Appeal No. 89 of 1973

A. Chinnaswamy Gounder	Vs	APPELLANT
Chinnaswami Gounder and Others		RESPONDENT

Date of Decision : 09-04-1974

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 11, 19A

Citation : AIR 1975 Mad 73 : (1975) 88 LW 138

Hon'ble Judges : K. Veeraswami, C.J.; Varadarajan, J

Bench : Division Bench

Advocate : K. Parasaran and S.R. Srinivasan, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Veeraswami, C.J.—A piece of pathway was the subject-matter of proceedings before the Board of Revenue. It took the view that the

appellant was not entitled to a ryotwari patta to this piece of land, as it was used as a pathway from time immemorial. Incidentally, it recorded a

finding that the claim of the appellant to a ryotwari patta for the land u/s 11(a) of Madras Act XXVI of 1948 was not well founded. The Board,

however, as it conceived the "ends of justice" thought that they would be met by a recognition of the appellant's claim to the land u/s 19-A of the

Abolition Act. It, therefore, in exercise of its powers u/s 19-A, directed that the appellant be allowed to remain in occupation of the land in S. No.

40/3, subject to payment of taram assessment and to the further conditions that he should allow the public to use the pathway as was done till then

and that he should maintain the pathway in good condition. The Board also reserved the rights of the Government to resume the land at any time

without any notice and at the occupant's risk; if any of the conditions were violated. This order of the Board was quashed by Palaniswamy, J., on

the view that the Board had no jurisdiction to make the order. In support the learned Judge relied on the observations of a Division Bench of this

court in W. A. 132 of 1962.

2. In our opinion, the learned Judge's view cannot be sustained. The effect of the notification u/s 3 of the Abolition Act is to transfer the ownership

of the entire estate, including communal land, to the Government, and the vesting is absolute free from all encumbrances. It is now well settled that

no title to any part of the land vests in any person except as provided under the Act and through the procedure envisaged under its provisions. That

being so ryotwari patta would issue either for ryoti land or for land shown to be private land either to the ryot or to the quondam landholder, as the

case may be. As for communal lands, the Act does not contemplate conferment of ryotwari patta on any one. Be it noted that the ownership in the

communal lands is with the Government, which can deal with it in any way it likes subject, of course, to the communal character of the land. That

precisely is what the Board did in this case. Section 19-A deals with such communal lands. Sub-section (2) of the section is specific that in respect

of such lands, Government may allow a person to remain in possession subject to payment of assessment and such specific terms and conditions as

may be specified. It is not merely communal land which is not likely to be used as such or would cease to be as such that is within the scope of

Section 19-A. Even lands which are still communal lands and required for communal purposes would fall within the ambit of Section 19-A as its

terms obviously indicate. The observations relied on by the learned Judge do not have the effect of taking out all such lands as are likely to be not

used for communal purposes from the purview of Section 19-A . On facts, the decision in the writ appeal went on on entirely different footing,

which has no relevance to the present consideration. The appeal is allowed and the order of the Board of Revenue will stand restored. No costs.