

(1971) 03 MAD CK 0050

In the Madras High Court

Case No : Writ Petition No. 4498 of 1968

A. Karuppannan Servai

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 18-03-1971

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 11, 19A, 3, 67(1), 67(2)

Citation : (1970) ILR (Mad) 278

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

Bench : Division Bench

Advocate : V. Vedantachari and T. Rangaswamy Iyengar, for the Appellant; S. Mohan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Raghavan, J.—On a reference by Ismail, J. this petition comes before us. In 1945, 1946 and 1950, the then landholder assigned to the Petitioner 4 acres 68 cents in Section No. 399-1 and 12 acres 70 cents in Section No. 400-1, both covered by paimash No. 908, in Bodi North Hills Village. After the estate in which the lands were situate had been notified and taken over under the Madras Act XXVI of 1948, the Board of Revenue, by an order, dated August 19, 1964 made in exercise of the power delegated to it under the proviso to Section 11 read with the rules framed in exercise of the powers u/s 67(1) and (2)(c) directed that ryotwari patta be issued for the lands to the Petitioner. This order was made after calling for and perusing the reports of two Settlement Officers, dated January 4, 1963 and July 17, 1964, respectively. Long later, on December 20, 1967, the State Government by a memorandum of that date, called upon the Petitioner to show cause within a specified time against the proposal contained in it, to (sic) as the character of the land was forest according to the nature of the land on ground at the time of assignment, though in the orders of assignment made, it was mentioned as dry, garden, the claim of the Petitioner, if any, should be examined u/s 19-A and not under the proviso to Section 11. The memorandum

also conveyed the view of the Government that the order of the Board of Revenue aforesaid was not, therefore, in order. In answer, detailed representations were made by the Petitioner within the time specified. The Petitioner asserted that the lands were ryoti, that in the assignment, the lands were described as garden lands, that the assignment was made to him in 1945, 1946 and 1950, that even long before it, the lands had come into his possession by an oral arrangement with the ex-landholder from 1934 and that in order to validate his long enjoyment, orders of assignment were passed in those years. The Petitioner also stated that even on the dates of assignments the lands were full blown garden lands with silk cotton, mango, orange and jack trees aged even then about twelve years. The attention of the Government was also invited by him to an earlier order of the Government. G.O. Ms. No. 8005, Revenue, dated July 1, 1965, to the effect that it would not be desirable to reopen old cases wherever there was a change of policy or new set of instructions issued so as to prejudicially affect the vested rights of parties and that assignments already ratified by the Board of Revenue and Settlement Officers need (sic) be cancelled. The Government's attention was further invited to the fact the Petitioner had already filed before the Assignment Settlement Officer Madurai, all the relevant documents at the initial enquiry itself. On March 14, 1968, by G.O. Ms. No. 609, the Government directed:

The Government have examined these representations. When a portion of land in Section Nos. 399 and 400 has been held non-ryoti, equity and justice require that the other portion also should be accorded the same treatment and in view of the similarity of the two cases, the orders of the Government in paragraph 2 of the G.O. Ms. No. 2005, Revenue, dated 1st July 1965 will not apply to this case. Setting aside the orders of the Board of Revenue, passed u/s 11 proviso and remanding the case back to the Settlement Officer, Madurai for enquiry and disposal u/s 19-A of the Act will not prejudice the claims of the Petitioner in any way. He has enough opportunity to put forth his claims again during enquiry by the Settlement Officer, Madurai u/s 19-A of the Abolition Act. The Government, therefore, set aside the orders in B.P. Ms. No. 1545/64, dated 19th August 1964 and remand the case to the Settlement Officer, Madurai for fresh enquiry and disposal u/s 19-A of the Estates Abolition Act after giving due notice to the claimant.

This order is attacked on two grounds: (i) The Government had no powers of revision over the orders of the Board by which the lands had been assigned to the Petitioner, (ii) on the merits, the order of the Government ex facie showed that, it had not applied its mind to the character of the lands, with reference; to the relevant elements which had to be borne in mind in applying the proviso to Section 11.

2. In our opinion, both the points of the Petitioner are well founded. As to the first, Section 11 relates to grant of ryotwari patta and the proviso hereto says that no person who has been admitted into possession of any land by a

landholder, on or after the 1st day of July 1945 shall, except where the Government, after an examination of all the circumstances otherwise direct, be entitled to a ryotwari patta in respect of such land. Rules were framed in exercise of the enabling power u/s 67(1) and (2)(c) by which the power the Government under the proviso was delegated to the Board of Revenue. Section 67(2)(c) confers power on the Government to make a rule providing for the delegation of the powers conferred by the Act on the Government or any other authority, officer or person. Sub-section (3) of the section further provides that a rule made under clause (c) of Sub-section (2) may contain restrictions and conditions subject to which the power delegated may be exercised and also for control and revision by the delegating authority either suo motu or an application of the orders of the authority or person to whom the power is delegated. The preamble to the rule of delegation made u/s 67(1) and (2)(c) reads:

The powers specified in column (2) of the schedule below which are conferred on the Government by the sections of the Act specified in the corresponding entry in column (1) of the said schedule may be exercised also by any of the authorities or officers specified in the corresponding entry in column (3) thereof subject to such control as may be specified in the said column (8) and also subject to revision by the Government:

Provided that in the case of appeals against orders passed u/s 3(d) proviso, any order passed in appeal by the Revenue Divisional Officer shall be subject to revision by the District Collector and any order passed in appeal by the District Collector shall be subject to revision by the Board of Revenue.

SCHEDULE.

Section.

Scheduled power.

Authorities or officers by whom the power should be exercised.

(1)

(2)

(3)

11 Proviso.

Power to direct that a person admitted to possession of any land on or after 1st July 1945 be entitled to a ryotwaripatta in respect of such land.

Settlement Officers Board of Revenue.

Revision petition against the orders of the Settlement Officer or the Director of Settlements or the Board of Revenue (Settlement of Estates) shall be presented to Government within thirty days of the date of communication of the respective orders as prescribed.

3. Learned Counsel for the Petitioner contends that the phraseology used in the opening paragraph of the rule would not enable the Government to revise the orders of the Board of Revenue and that its only effect is to confer powers of control and revision in respect of administrative aspects of the exercise of the power by the delegate. In support of this construction, Counsel relies on *Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary*, where a quasi-judicial power is vested in a certain authority and there is provision for delegating it, normally, the authority delegating the power will have no control over the delegate in the exercise of the quasi-judicial power. Such a control is, however common where the power delegated is administrative in character. Having regard to this general principle *Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary*, construed Section 68 of the Bombay Municipal Corporation Act. The Section read as follows:

68. Municipal Officers may be empowered to exercise certain of the powers, etc., of the Commissioner.

(1) Any of the powers, duties, or functions conferred or imposed upon or vested in the Commissioner by any of the sections, sub-sections or clauses mentioned in Sub-section (2) may be exercised, performed or discharged, under the Commissioner's control and subject to his revision and to such conditions and limitations, if any, as he shall think fit to prescribe, by any municipal officer whom the Commissioner generally or specially either by name or by virtue of office, empowers in writing in this behalf; and in each of the said sections, sub-sections and clauses the word Commissioner shall, to the extent to which any municipal officer is so empowered be deemed to include such officer.

The Supreme Court with reference to the section observed at page 1488:

What is objected to is the provision, both in the section as well as in the order of delegation, that the exercise of the function is to be under "the Commissioner's control" and "subject to his revision". These words are really appropriate to a delegation of administrative functions where the control may be deeper than in judicial matters. In respect of judicial or quasi-judicial functions these words cannot of course bear the meaning which they bear in the delegation of administrative functions. When the Commissioner stated that his functions were delegated subject to his control and revision it did not mean that he reserved to himself the right to intervene to impose his own decision upon his delegate. What those words meant was that the Commissioner could control the exercise administratively as to the kind of cases in which the delegate could take action or the period or time during which the power might be exercised and so on and so forth. In other words, the administrative side of the delegate's duties was to be the subject of control and revision but not the essential power to decide whether to take action or not in a particular case.

The first paragraph of the rule made u/s 67(1) and (2)(c) of Madras Act XXVI of 1948 very closely resembles the phraseology used in the above section of the

Bombay Municipal Corporation Act. That paragraph enables powers entrusted to the Government to be exercised by the specified authorities subject to the control specified and also subject to revision by the Government. The revision in this context must relate to the exercise of the power by the delegate. It is not possible to say that the revision contemplated there is against the orders passed by the delegate exercise of the power delegated. If such a revision power was meant, it should have said so in specific words. In fact, the proviso following that paragraph speaks of appeals against orders passed. Also, in the third column the words revision petition against the orders of the Settlement Officer have been used. The control and revision, mentioned in the main paragraph of the rule, therefore, are not in respect of the orders passed by the delegate, but they relate to the exercise of the power by the delegate. That means that the control and revision should be given the same meaning as was given by the Supreme Court to similar words in; Section 68 of the Bombay Municipal Corporation Act. Even assuming that the third column in the schedule to the rule provided for revision against orders of the Board of Revenue that is only a revision by petition and not suo motu revision by the Government. Where suo motu revision is to be provided for the third column in the schedule has specifically done it. In fact, Section 67(3) also contemplates that power of revision by petition and power to revise suo motu are separate matters. We are, therefore, of the view that the impugned order was without jurisdiction.

4. On the second point of the Petitioner too, we think, it is of substance. In the material part of the order which we have extracted, it may be seen that the Government did not say that the lands in question for stated reasons were forest in character. But, on the other hand, it proceeded on the assumption that because a portion of the land in Section Nos. 399 and 400 had been held non-ryoti, equity and justice required that the other portion also should be accorded the same treatment, in view of the similarity of the two cases. Nowhere in the order of the Government have the representations of the Petitioner been considered. We have already mentioned what those representations were. The Petitioner's case was that by an oral arrangement with the ex-landholder he had got into possession even from 1934 and that long before the assignments in 1945, 1956 and 1950, he had developed the lands and planted the trees above referred to which were at least about twelve years old. None of these alleged facts have been considered in the impugned order. We fail to see how equity and justice had any place and how they could bear on the character of the land. Merely because a neighbouring land is a forest land, it does not follow that the adjoining land also should be forest. No equity and justice compel that conclusion. The considerations germane to the application of the proviso were indicated by one of us in Writ Petition Nos. 26 and 221 of 1963. *Alagiriswami Naicker and Poppula Jakkama Naicker v. The State of Madras* by the Secretary to Government Revenue Department. Those cases dealt with two plots of lands situate in the middle of a forest and were described as dry lands.

The Government took the view that since the lands lay in the middle of a forest

area and the Petitioners in those cases had to trespass through the forest area to a distance of about two miles to reach the lands, which would be a hindrance to the Forest Department, no ryotwari patta should be issued. Holding that that approach was wrong the Court observed:

Under the proviso what the Government has to do is to see whether the land in question is a ryoti land, secondly whether the person claiming patta was admitted into possession by the landholder, thirdly whether he was so admitted on or after the specified date and fourthly, whether the transaction was bona fide and was supported by consideration. If these matters have to be answered in the affirmative, there would be no further discretion vested in the Government to deny ryotwari patta.

We find ourselves in entire agreement with these observations. The impugned order has not paid attention to any of these matters. But it proceeded on the basis that because the neighbouring land was of a particular character, it should necessarily follow that the lands in question also should bear that character.

5. The order under consideration is quashed and the petition is allowed with costs.