

(1965) 08 MAD CK 0038

In the Madras High Court

Case No : Second Appeal No. 1938 of 1964

A. Somasundaram Servai and Another	APPELLANT
Vs	
The State of Madras and Another	RESPONDENT

Date of Decision : 05-08-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 11, 12, 13, 14, 15

Citation : (1966) ILR (Mad) 539

Hon'ble Judges : Venkataraman, J

Bench : Single Bench

Advocate : A. Sundaram Ayyar and P. Balasubramanian, for the Appellant; A. Alagiriswami, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Venkataraman, J.—The Plaintiffs are the Appellants in the second appeal. The suit was brought by the two Plaintiffs as representatives of the Merchants' Association at Tiruppattur for a declaration of the title of the Association to a particular site which lies west of a tank called Alamarathu Oorani in Tiruppattur, Ramanathapuram district. The case of the Plaintiffs is that the tank itself was dug by the members of the Association for providing drinking water to Tiruppattur and that the site was acquired to serve as catchments area for the said tank. Tiruppattur was an estate within the meaning of the Estates Land Act, 1908 and has been taken over by the Government under the Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948). The suit was instituted after the estate was so taken over. The Government proceeded to construct some quarters in a portion of the suit site for the police department. It was thereupon that the suit, out of which this appeal arises was brought by the Plaintiffs for a declaration of the title of the Association to the suit site and for an injunction restraining the Government the first Defendant in the suit, and the contractor, engaged by the Government for the construction of the police quarters, the second Defendant,

from interfering with the possession of the suit site which is with the Plaintiffs.

2. The Government resisted the suit contending that the Alamarathu Oorani was not the property of the trust mentioned in the plaint but was always registered as Oorani poramboke in the Estate's accounts, that the suit site had always been registered as part of the Oorani poramboke and that the fencing put up on the site by the Plaintiffs was a recent creation. They further contended that by virtue of Section 3 of the Abolition Act, 1948, whatever rights the Plaintiffs might have had, assuming that they had any, were abolished and vested in the Government, that the Plaintiffs must have recourse to the machinery provided in the Act for establishing their rights, if any, for instance by getting a ryotwari patta by applying under, Section 11 of the Act, that the civil Court would have no jurisdiction to maintain such a suit, that actually the Plaintiffs applied for a patta to the Settlement Officer which was negative, and that that order had become final.

3. The learned District Munsif, who tried the suit, held on the question of fact that the Plaintiffs had not made out their case that there was any Association of Trust claimed by the Plaintiffs, or that Alamarathu Oorani belonged, to such trust or that the suit was the catchments area of the Oorani and belonged to the trust. On the question of jurisdiction also, he upheld the defence. In the result, he dismissed the suit.

4. The Plaintiffs preferred an appeal to the learned Subordinate judge of Sivaganga. On the question of fact, the learned Subordinate Judge reversed the finding of the trial Court and held that the Plaintiffs had made out that the site of the Oorani and the suit site were the private properties of the Merchants' Association and were in their possession and in particular on the date of the suit. He did not attach importance to the entries in the estate accounts and subsequently of the tank and the land being poramboke property. On the question of jurisdiction, however, he upheld the contention of the State and held that the Civil Court had no jurisdiction and dismissed the suit.

5. The point of law, which has been argued before me by Mr. A Sundaram Iyer, learned Counsel for the Plaintiffs-Appellants is that the Courts below are wrong in their finding on the question of jurisdiction of the Civil Court. His contention is that, on a true construction of Section 3 of the Abolition Act, in the light of the purpose of the Act which may be taken to have been the abolition of the landholder as an intermediary and to establish the ryotwari settlement in the quondam estates, it cannot be held that the rights of persons like the Plaintiffs in this case were intended to be abolished by the Act, that further, even assuming for the sake of argument, that the Act intended the abolition of the rights of the Plaintiffs, as they stood on the date of the abolition, the Act has not provided a specific machinery enabling the Plaintiffs to establish their rights and that consequently the Plaintiffs could only resort to the Civil Court for establishing their rights. Before examining these contentions it is necessary to quote the relevant portions of Section 3 of the Abolition Act namely:

3. With effect on and from the notified date and save as otherwise expressly provided in this Act-

(a)....

(b) the entire estate (including all communal lands; porambokes; other non-ryot lands; waste lands; pasture lands; lanka lands; forests; mines and minerals; quarries-rivers and streams; tanks and irrigation works; fisheries and ferries), shall stand transferred to the Government and vest them, free of all encumbrances and the Madras Revenue Recovery Act, 1864, the Madras Irrigation Cess Act, 1865, and all other enactments applicable to ryotwari areas shall apply to the estate.

(c) all rights and interests created in or over the estate before the notified date by the principal or any other landholder, shall as against the Government cease and determine;

(d) the Government may, after removing any obstruction that may be offered, forthwith take possession of the estate and all accounts, registers, pattas, muchilikas, maps, plans and other documents relating to the estate which the Government may require for the administration thereof:

Provided that the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is prima facie entitled to a ryotwari patta.

(i) if such person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta;

(ii) if such person is a landholder, pending the decision of the Settlement Officer and the Tribunal on appeal, if any, to it, as to whether he is actually entitled to such patta ;

(e) the principal or any other landholder and any other person, whose rights stand transferred under Clause (b) or cease and determine under Clause (c), shall be entitled only to such rights and privileges as are recognized or conferred on him by or under this Act.

(f) the relationship of landholders and ryot shall, as between them, be extinguished.

(g) any rights and privileges which may have accrued in the estate, to any person before the notified date, against the principal or any other landholder thereof, shall cease and determine, and shall not be enforceable against the Government or such landholders, and every such person shall be entitled only to such rights and privileges as are recognized or conferred on him by or under this Act.

6. Prima facie the meaning of the section is that the entire estate including the interest of a ryot in an admittedly ryoti land was also abolished. But the Act

provides for a machinery to grant ryotwari patta either to the ryot whose ryoti land was thus abolished and taken over (Sections 11) or to the landholder whose private land was thus taken over (Sections 12 to 15). Briefly speaking the provision in respect of ryoti land which, according to the contention of the Plaintiffs, the suit site was on the date of the abolition, is that u/s 11, a ryot shall be entitled to a patta by application to the Settlement Officer, and a revision petition lies against the decision of the Settlement Officer to the Director u/s 5 and a further revision to the Board of Revenue, u/s 7. Thus u/s 3(b) the rights of the ryot in ryoti land were abolished and vested in the Government. He has been given a right to work out his rights by applying for a patta and till such time as he is able to get a patta, his rights are protected to a large extent by the proviso to Section 3(d), the machinery provide in and the rules published in the Fort St. George Gazette, dated 2nd March 55 (pages 99 to 102 of the Official Publication of the Act and Rules). Briefly stated, those rules provide for the Manager of the Estate (or the Settlement Officer) giving a notice to the person in occupation of the land if he considers that the person is not entitled to a ryotwari patta and that the occupation thereof is objectionable. An enquiry is provided for with an appeal to the Revenue Divisional Officer and a revision to the Collector and the Board of Revenue. Thus it would be seen that the Act after abolishing the pre-existing right of the ryot in ryoti land has provided a machinery for his getting a patta which will permanently protect his rights and has provided a machinery under the proviso to Section 3(d) for the temporary protection of his right to possession. This will, therefore, fall within the third of the three categories mentioned in the celebrated judgment of Willis J., in *The Wolverhampton New Water Works Co. v. Hawkesford* (1859) 6 C.B. (N.S.) 356. The eminent Judge observed at page 356:

There are three classes of cases in which a liability may be established founded upon a statute. One is where there was a liability existing at common law and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy. There, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it...The remedy provided by the statute must be followed and it is not competent to the party to pursue the course applicable to cases of the second class.

7. There are a number of decisions of this Court where the same view has been taken and expressed. Since they are all uniform on this point, it is sufficient to refer to them at this stage namely, *State of Madras v. Swaminathan* (1955) 2 M.L.J. 178, *State of Madras v. Karuppiiah Ambalam* (1959) 1 M.L.J. 185, *Soosai Odayar v. Andiappan* (1959) 1 M.L.J. 195 *Adakalathammal Vs. Chinnayyan*

Panipundar, and Ramaswami v. Perimala Pandian ILR (1964) Mad. 372. The last mentioned case may be said to be a direct decision on this point by Veeraswami J., where also what was in effect prayed for was a declaration that the Plaintiffs were entitled to the suit lands on the footing that they were previously ryoti lands and not poramboke lands.

8. Sri Sundaram Ayyar, however, urges that on a true construction of Section 3 of the Act, it is not necessary to go so far as to say that the Abolition Act intended the abolition of the rights of a ryot in a ryoti lands. For this argument he asks us to take the case of an admittedly ryoti land where there is no question of the land being a poramboke land. He also asks us to suppose that there is no dispute between two rival claimants in respect of ryoti land. He asks why in such a case it should be held that the Act intended to destroy the rights of the ryot and vest them in the Government. He submits that for the purpose of bringing into existence ryotwari tenure it was enough to abolish the rights of the landholders who were considered to be intermediaries. He refers to the preamble of the Act which says that:

Whereas it is expedient to provide for the repeal of the Permanent Settlement, the acquisition of the rights of landholders in permanently settled and certain other estates in the Province of Madras and the introduction of the ryotwari settlement in such estates.

9. And points out that the preamble does not operate to extinguish the interests of the ryot who is the tiller of the soil. He submits again that u/s 3(b) of the application of the Madras Revenue Recovery Act, 1864 and the Madras Irrigation Cess Act, 1865 can be justified only on the footing of the recognition of the continuance of the rights of a ryot. He points out that Clause (c) of Section 3 relates only to rights and interests created by the landholder and there is no corresponding provision in respect of rights and interests created by a ryot in a ryoti land. Similarly referring to Section 3 Clause (d), he urges that the records and accounts mentioned there are those in the custody of the landholder and it is not intended that the Government should take the records and accounts from the possession of the ryot. He emphasises that Section 11 recognizes the rights of a ryot to get a ryotwari patta because it says that every ryot in an estate shall with effect on and from the notified date be entitled to a ryotwari patta in respect of all ryoti lands. His second submission is that, even assuming for the sake of argument, that the Act abolished the rights of a ryot in a ryoti land, the Act does not provide a machinery for deciding whether a land is a ryoti land or a poramboke land. He submits that Sections 11 to 15 are ineffective for this purpose. According to him, Section 11 deals only with rival claims to an admittedly ryoti land and Sections 12 to 15 provide for an enquiry where the question is whether a land is a private land of the landholder or a ryoti land of a ryot.

10. Taking up the first point I have already pointed out that in all the decisions of this Court, some of which are Bench decisions, the view has been consistently

taken or expressed that the abolition u/s 3(b) is so complete as to vest in the Government the rights of the ryot in what was admittedly a ryoti land. But apart from that, this is clear from the consideration of the language of Section 3 itself. Section 3(b) says that the entire estate shall stand transferred to the Government and vest in them. The words entire estate are so general as to take in what is admittedly a ryoti land and to transfer it to the Government and vest, it in them. This is emphasised again in Clause (e) of Section 3 which says that the principal or any other landholder and any other person whose rights stand transferred under Clause (b) shall be entitled only to such rights and privileges as are recognized or conferred on him by or under this Act. The words any other person are sufficiently wide to include a ryot and his rights in what was admittedly a ryoti land. It is true that the clause as quoted was the result of the amendment introduced by the Amendment Act XLIV of 1956, and that originally Clause (e) ran thus:

(e) the principal or any other landholder and any other person whose rights stand transferred under Clause (b) or cease and determine under Clause (c) shall be entitled only to compensation from the Government as provided in this Act.

11. But we must take into account the amendment which is deemed to have come into force from the very inception of the original Act. Clause (e) emphasises that the rights of a ryot in what is admittedly a ryoti land were abolished and he will only be entitled to such rights and privileges as are recognized or conferred on him by or under the Abolition Act. Clause (g) also emphasises the same thing. Even the proviso to Section 3(d) may be considered to emphasise this because it assumes that but for the proviso the ryot in possession of what formerly a ryoti land would be liable to be dispossessed. To prevent hardship it is provided that the Government shall not dispossess him if they consider that he is prima facie entitled to a ryotwari patta and a machinery is provided for working out this in the rules of 2nd March 1955 already referred to. As for the argument of Sri A. Sundaram Ayyar based on Clauses (c) and (d) it is sufficient to point out that they cannot be used to detract from the wide meaning which has to be given to Clause (b).

12. Again as for the argument that the Act has not provided a machinery for the determination of the question as in this case, whether the land is a ryoti land or a poramboke land, it must be held to be implied in the application which the Plaintiffs have to make to the Settlement Officer for getting a patta u/s 11. Before granting a patta, the Settlement Officer will have to decide whether it was a ryoti land or a poramboke land and if it is a ryoti land whether the Plaintiffs are the persons entitled to a ryotwari patta. This is also what Ramachandra Ayyar J.; (as he then was) has pointed out in *State of Madras v. Karupiah Ambalam* (1959) 1 M.L.J. 185 at page 187:

There is no provision for deciding the character of the lands which is claimed to be ryoti lands as it is evidently presumed that every cultivable land is ryoti land. But Section 3(d), proviso, would seem to contemplate a decision by the

Settlement Officer as to whether a person in possession would be entitled to patta which would include a determination whether a land was ryoti land or not.

13. Lower down the learned Judge says that in respect of lands in a village taken over by the Government under the Abolition Act there is no ownership by any private individual till that person obtains ryotwari patta from the Government.

Therefore, I have to uphold the contention of the Government that it is not possible to grant the declaration of title sought for by the Plaintiffs.

14. The question, however, remains whether an injunction can be granted having regard to the proviso to Section (3)(d) . Paragraph 12 of the written statement of the Government is to the effect that the Plaintiffs applied for a patta to the Settlement Officer and failed and that order had become final. But learned Counsel for the Appellants states that the matter is still pending before the Settlement Officer and he has stayed the enquiry pending the decision in the suit. However that may be it is clear, on the finding of the learned Subordinate Judge that the Plaintiffs are in possession and if they have to be dispossessed, the manager of the estate has to adopt the procedure prescribed in the rules of 2nd March 1955. It has not been suggested by Sri Rangarajan representing the Government Pleader that the manager has taken any proceedings under those rules; presumably he has not. It will be open to the manager to take proceedings as indicated by those rules and without observing such rules, he will not be entitled to dispossess the Plaintiffs vide judgment in Letters Patent Appeal No. 107 of 1959, dated 27th October 1960. I think this remark in this judgment is sufficient and it is unnecessary to issue a formal injunction. Though the manager has discretion to act under the rules, he may well consider the desirability of not dispossessing the Plaintiffs till the final decision of the Settlement Officer and the other higher authorities in respect of the application for patta which has been made by the Plaintiffs.

15. Before closing however, I think it right to point out that in the new Act XXVI of 1963 (Madras Inam Estates Abolition and Conversion into Ryotwari Act) for the abolition of the inam estates, a different machinery is provided in respect of applications for patta. In that Act, against the decision of the Settlement Officer, an appeal is provided to the Tribunal (District Judge) and a further appeal to a Bench of this Court sitting as a special Tribunal even on questions of fact. The Abolition Act XXVI of 1948 only provides for a revision petition to the Director of Settlements against the decision of the Settlement Officer and a further revision to the Board of Revenue. There is of course the remedy of writ under Article 226 of the Constitution but its scope is limited. The Legislature may well consider the desirability of amending Act XXVI of 1948 to bring it into conformity with Act XXVI of 1963, on this point. The machinery of the Tribunal and this Court is available and it can be made use of, readily if Act XXVI of 1948 is amended suitably.

16. In the result, excepting for the limited direction given above that the

manager shall not dispossess the Plaintiffs without observing the procedure formulated in the rules of 2nd March 1955, the appeal is dismissed but without costs. Leave granted.