

(1978) 09 MAD CK 0006
In the Madras High Court

A.N.N.K. Mohamed Kasim and Others	APPELLANT
Vs	
Alagan and Others	RESPONDENT

Date of Decision : 14-09-1978

Acts Referred:

Citation : (1979) 92 LW 425 : (1979) 2 MLJ 269

Hon'ble Judges : Ismail, J

Bench : Single Bench

Judgement

Ismail, J.—This is an appeal against the order of the Special Tribunal, Inam Abolition, Ramanathapuram at Sivaganga dated 30th May,

1974, made in R.A. No. 172 of 1971. The appellants herein claimed ryotwari patta u/s 9 of the Tamil Nadu Act (XXVI of 1963) on the basis that

the inam in question was a new inam estate. The Assistant Settlement Officer III (Enquiries), Karaikudi, by his order dated 29th May, 1970, held

that the lands involved were private lands. Still he did not grant ryotwari patta to the appellants on the ground that they had not proved cultivation

and possession for the requisite period as provided for u/s 9 of the Act with regard to the new inam estate. On the other hand he held that the

respondents would be entitled to ryotwari patta u/s 11 of the Act, as the appellants were not entitled to get patta u/s 9 of the Act. Against this

order of the Assistant Settlement Officer, the appellants preferred an appeal before the Tribunal. The respondents contended before the Tribunal

that the lands were ryoti lands and that they were entitled to ryotwari patta on that basis u/s 10 of the Act. The Tribunal accepted this case of the

respondents and reversed the finding of the Assistant Settlement Officer that the lands were private lands and held that the lands were ryoti lands

and directed grant of patta u/s 10 of the Act. It is against this order that the present appeal has been filed by the landholders.

2. At the outset Mr. T. Rangaswami Iyengar, learned Counsel for the appellants contended that when the Assistant Settlement Officer had

rendered a finding that the lands in question were private lands, it was not open to the Tribunal to reverse that finding and hold that the lands were

ryoti lands, in an appeal preferred by the appellants themselves. According to the learned Counsel, even though patta was granted to the

respondents herein by the Assistant Settlement Officer u/s 11 of the Act, since their claim that the lands were ryoti lands was rejected by the

Assistant Settlement Officer, they should have preferred an appeal before the Tribunal and in the absence of an appeal by the respondents herein,

the Tribunal had no jurisdiction to reverse the finding of the Assistant Settlement Officer that the lands were private lands. We are of the opinion

that there is no substance in this contention. In the first place, once the Assistant Settlement Officer granted ryotwari patta to the respondents

herein and against the said grant the appellants preferred an appeal, it was open to the respondents herein to support and sustain the order of the

Assistant Settlement Officer on a ground put forward by them, but found against by the Assistant Settlement Officer. A perusal of the order of the

Assistant Settlement Officer makes it clear that the respondents herein put forward a case that the lands were ryoti lands, but the Assistant

Settlement Officer did not accept that case and, however, he granted patta only u/s 11 of the Act. It must be noted that Section 11 comes into

operation only where no one is entitled to ryotwari patta in respect of a private land u/s 9 and none is entitled to ryotwari patta in respect of a ryoti

land u/s 10. Consequently Section 11 is more or less in the nature of a residuary section. Hence once the Assistant Settlement Officer found that

the lands were private lands and the appellants were not entitled to ryotwari patta, because they had not proved possession and cultivator for the

requisite period, the grant was naturally made by the Assistant Settlement Officer in favour of the respondents u/s 11(1) on the basis that the lands

were only private lands. Consequently in an appeal preferred by the appellants herein, the respondents herein were entitled to put forward the

contention, that the Assistant Settlement Officer was wrong in holding that the lands were private lands and that he ought to have held that they

were ryoti lands and that the respondents were entitled to ryotwari patta u/s 10(1) of the Act. In view of this, we are of the opinion that the

Tribunal had jurisdiction to reverse the finding of the Assistant Settlement Officer with regard to the character of the lands.

3. As far as the second aspect is concerned, we are again of the opinion that the respondents, herein could not have preferred an independent

appeal against the order of the Assistant Settlement Officer, simply because the Assistant Settlement Officer had negatived their contention with

regard to the character of the lands as ryoti lands. Section 12 of the Act deals with the determination of the question by the Settlement Officer and

appeal against the said decision or determination. Sub-section (1) of Section 12 states that the Settlement Officer shall examine the claims of any

person for a ryotwari patta u/s 9 or Section 10 or Section 11, as the case may be, and decide in respect of which lands the claim should be

allowed. Sub-Section (2) of Section 12 which alone deals with appeal states:

Against a decision of the Settlement Officer under Sub-Section (1), the Government may, within one year from the date of the decision, and any

person aggrieved by such decision, may, within three months from the said date, appeal to the Tribunal, Consequently, the person who can appeal

to the Tribunal is one who is aggrieved by the decision of the Settlement Officer u/s 12(1). The decision of the Settlement Officer u/s 12(1) is as to

in respect of which lands the claim for patta should be allowed. Therefore even though the respondents herein claimed ryotwari patta u/s 10, once

they were granted ryotwari patta u/s 11, they could not be said to have been aggrieved by the decision of the Assistant Settlement Officer and

therefore they could not have preferred an appeal against the order of the Assistant Settlement Officer, simply because the Assistant Settlement

Officer had held that the lands were private lands and not ryoti lands. Hence we reject the contention of the learned Counsel for the appellant that

the Tribunal had no jurisdiction to hold that the lands were ryoti lands in an appeal preferred by the appellants herein against the order of the

Assistant Settlement Officer, who had held that the lands were private lands.

4. However that does not dispose of the appeal. Once we have upheld the jurisdiction of the Tribunal to go into the question, the next question that

arises for consideration is, whether the Tribunal was right in holding that all the

lands involved were ryoti lands and that the respondents were entitled to ryotwari patta u/s 10 of the Act. We are of the opinion that in this case the Tribunal had failed to perform its obligations. The Assistant Settlement Officer as well as the Tribunal were under an obligation to go into each item of the lands and to find out as to whether it is a private land or a ryoti land for the purpose of deciding the claim to ryotwari patta put forward by the parties. As we have pointed out already, the Assistant Settlement Officer held that all the lands were private lands, while the Tribunal held that all the lands were ryoti lands. In our opinion, this is oversimplification of the controversy between the parties. It is true that before the Assistant Settlement Officer the appellants put forward the claim that all the lands were private lands. From that it does not follow that if it is established that some of the lands were ryoti lands, the entire claim of the appellants must be thrown out. It is for the authorities below to examine which land was private land and which land was ryoti land and further examine with reference to such land, who was entitled to patta and under which provision. In this case the Tribunal has referred to and relied on Ex. R-53, which is a copy of the plaint filed in O.S. No. 97 of 1953 on the (SIC) of the Court of the Subordinate Judge, Sivaganga, against the notification made under the Tamil Nadu Act (XXX of 1947). In that plaint the landholders themselves had admitted that there were ryoti lands in the inam estate. The mere fact that the landholders themselves admitted that there were ryoti lands in the inam estate will not establish that all the lands in question were ryoti lands. Exhibit R-53 Will only show that the appellants themselves have admitted that there were ryoti lands in the inam estate but that will not go to prove that there were no private lands at all in the inam estate.

5. Under these circumstances, we have no alternative but to allow the appeal and set aside the order of the Tribunal and remand the matter to the Tribunal for fresh disposal. The Tribunal shall find out whether all the lands in the estate are private lands or ryoti lands and if some of them are private lands or ryoti lands and if some of them are private lands and some of them are ryoti lands, the Tribunal shall further find out with reference to which private lands the appellants will be entitled to patta, if they satisfy the requirements of Section 9 and in respect of which of the ryoti lands,

each of the respondents will be entitled to ryotwari patta. If by any chance, the Tribunal is not in a position to decide the matter itself, it is certainly open to it to remand the matter to the Assistant Settlement Officer. Having regard to the fact that the matter is an old one, the Tribunal is directed to dispose of the matter as expeditiously as possible. The appeal is ordered accordingly. There will be no order as to costs.