

(1959) 07 MAD CK 0041

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 4000 of 1959

Assistant Settlement Officer, Pudukottai

APPELLANT

Vs

K. Karunagiri Muthiah Naicker

RESPONDENT

Date of Decision : 24-07-1959

Acts Referred:

Citation : AIR 1960 Mad 177 : (1960) 73 LW 16

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

(1) The respondent, Karunagiri Muthiah Naicker, was the owner of the village of D"Edayapatti. After Madras Act 26 of 1948 came into force, the Assistant Settlement Officer took proceedings suo motu under S. 9 of the Act to determine whether D"Edayapatti was an Inam estate as defined by that Act. On 11-4-1950 he came to the conclusion that it was an inam estate. Subsequently on 7-8-1951, the Government notified the estate under S. 3 of the Act. Meanwhile the landholder appealed to the Estates Abolition Tribunal against the decision of the Assistant Settlement Officer. That appeal was dismissed on 12-9-1952, as barred by limitation. Against that order of dismissal the landholder preferred W. P. No. 55 of 1953 to this court and obtained a ruled setting aside the order of the tribunal dated 12-9-1952.

The Tribunal therefore had to hear the appeal afresh. After further hearing, on 19-1-1954, the tribunal set aside the order of the Assistant Settlement Officer and remanded the proceedings to that officer for disposal afresh. When the proceedings were thus revived before the Assistant Settlement Officer, the landholder applied to him for stay of proceedings, because O. S. No. 101 of 1953 was pending in the Sub Court, Tiruchirapalli, where one of the main questions that arose for determination was whether D"Edayapatti was an estate at all as defined by the Estates Land Act and by Act 26 of 1948. On 28-6-1954, the Assistant Settlement Officer declined to grant that request, and he decided to proceed with the enquiry, that is, the enquiry under S. 9 of Act 26 of 1948. The

landholder, Muthiah Naicker, thereupon preferred W. P. No. 490 of 1954 to this Court. That was disposed of on 10-1-1956.

I pointed out in my order that, as the law stood then, while the Assistant Settlement Officer and the Tribunal on appeal, if any, had the exclusive jurisdiction to decide whether the village in question was an inam estate or not, the question whether D'Edayapatti was an estate at all as defined by the Estates Land Act and by Act 26 of 1948 could only be decided by the statutory authorities as collateral to the determination of the question, to decide which they had exclusive jurisdiction, and that the jurisdiction of the civil court to decide whether D'Edayapatti was an estate at all remained unaffected. Since that question was before the civil court in O. S. No. 101 of 1953, I held that it would be a proper exercise of discretion on the part of the Assistant Settlement Officer to stay the proceedings under S. 9 till the question was disposed of by the Civil Court in O. S. No. 101 of 1953. To that effect I directed the issue of a writ of Mandamus by my order dated 10-1-1956.

(2) Subsequent to that, Madras Act 30 of 1956 was passed which amended among others some of the provisions of the Act 26 of 1948. Section 3 of Act 30 of 1956 specifically provided that the question, whether a given territorial area constituted an estate as defined by the Estates Land Act, should be decided by the Tribunal constituted under the Act. Section 10 of Act 30 of 1956 excluded the jurisdiction of the civil courts to decide that question. Act 30 of 1956 was published in the Fort St. George Gazette on 19-12-1956. It was brought into effect from 3-8-1957.

(3) Thus, while the position on 10-1-1956, when W. P. No. 490 of 1954 was disposed of was that the civil court's jurisdiction to decide whether D'Edayapatti was an estate was intact, the position after Act 30 of 1956 came into force was that the jurisdiction of the civil court to decide that question had been taken away, and the exclusive jurisdiction, was vested in the statutory tribunal. Under S. 11 of Act 30 of 1956 the proceedings pending before the Assistant Settlement Officer stood transferred to the statutory Tribunal. The composition of the Tribunal itself is now governed by Madras Act 34 of 1958.

(4) After Act 30 of 1956 came into force, the Subordinate Judge of Tiruchirapalli before whom O. S. No. 101 of 1953 was pending, directed the transfer of those proceedings to the Tribunal constituted under Act 30 of 1956. The correctness of that order of the Subordinate Judge was challenged successfully by the landholder Muthiah Naicker in C. R. P. No. 1657 of 1957. On 15-10-1958 the order of the learned. Subordinate Judge was set aside by this court.

(5) It is under these circumstances that the present application has been filed on behalf of the State, which was a party respondent to W. P. No. 490 of 1954. The petition itself purports to be under Order 47, rule 1 and S. 114 C. P. C and under Art. 226 of the Constitution. The specific relief asked for is a review of the order in W. P. No. 490 of 1954, dated 10-1-1956. What the State desires in effect is

that the writ of mandamus that was issued to the Assistant Settlement Officer on 10-1-1956 should be recalled in the changed circumstances that prevail now. It should be remembered that under the law now in force it is not the Assistant Settlement Officer that has to complete the proceedings that were commenced by him under S. 9 of Act 26 of 1948, but the Tribunal constituted by act 30 of 1956 and reconstituted by Act 34 of 1958.

(6) The learned counsel for the respondent, Muthiah Naicken, contended that an application for review under the provisions of Order 47, rule 1 C.P.C. was unsustainable; (1) that provision had no application to proceedings taken in this court under Art. 226 of the Constitution, and (2) even if Order 47 rule 1 C.P.C. applied, a subsequent change in legislation would not justify the grant of a review.

(7) In *C. Chenchanna Naidu Vs. Praja Seva Transports Ltd., Cuddappah and Another*, decided by a Division Bench of this court, it was held that this court has jurisdiction to review an order passed under Art. 226 of the Constitution. The learned counsel for the respondent pointed out that in *Venkatasubbamma Rao v. Venkatarama Rao*, ILR 24 Mad 1 the Privy Council held that on the basis of events that transpired subsequently the order cannot be reviewed under the provisions of the Civil Procedure Code.

(8) It may not, however, be necessary for the to express any concluded opinion of mine on the questions (1) whether the application for review lies at all and (2) if it does, whether a review can be granted on the basis of a change in law subsequent to the date of the order sought to be reviewed. The question at issue before me, whether the writ of mandamus directed to be issued in W. P. No. 490 of 1954 on 10-1-1956 should be recalled or set aside, can be disposed of in the circumstances of this case on other grounds. It would not strictly be a case of a review at all falling within the scope of Order 47, rule 1 C.P.C.

(9) As the learned Advocate General pointed out, the basis on which the order was passed on 10-1-1956 in W. P. No. 490 of 1954 has disappeared with the subsequent change in legislation Act 30 of 1956 has vested exclusive jurisdiction in the statutory Tribunal to decide whether D"Edayapatti is an estate and the further question whether it is an inam estate. Quite obviously had that been the legal position in January 1956 I would not have granted the writ of mandamus asked for by the respondent Muthiah Naicker. As the learned Advocate General pointed out though the jurisdiction vested in this court under Art. 226 of the Constitution was invoked and exercised in W. P. No. 490 of 1954, what was in effect done was something of an interlocutory nature. The proceedings were left pending with the Assistant Settlement Officer.

The proceedings in the Sub Court in O. S. No. 101 of 1953 were left unaffected. The direction was that till O. S. No. 101 of 1953 was disposed of, the Assistant Settlement Officer should stay the proceedings under S. 9 of Act 26 of 1948. I realise that it was not quite in the nature of an interlocutory order in any

proceeding pending in this court. But that I think makes no real difference in the principle to apply. It was an order passed pending the final disposal of the proceedings pending before the Assistant Settlement Officer under S. 9 of Act 26 of 1948. Had it been a case of an interim injunction pending disposal of the proceedings before the Assistant Settlement Officer, quite obviously that injunction could have been vacated, if the changed circumstances justified such a course. The learned Advocate General pointed out that that in effect is the position now. The further contention of the learned Advocate General is that under the changed circumstances the State would even be entitled to ask for a writ of mandamus to direct the Tribunal to discharge its statutory duty and decide whether D'Edayapatti is an estate and an inam estate. That question however does not arise for determination now. The real question is whether the bar imposed by my order dated 10-1-1956 in W. P. No. 490 of 1954 to the determination of the question whether D'Edayapatti was an estate by a statutory authority should now be lifted in view of the change in the forum for the determination of that question effected by Act 30 of 1956. In my opinion, it is necessary to remove that bar, and that bar should be removed in the exercise of the inherent jurisdiction vested in this court. The order dated 10-1-1956 passed in the exercise of the jurisdiction vested in this court by Art. 226 of the Constitution should not be permitted to fetter the exercise of the statutory jurisdiction vested in the Tribunal.

Nor should it affect the rights of the parties declared by the law to have the question at issue determined by the statutory Tribunal which had been vested with the exclusive jurisdiction to decide whether D'Edayapatti is an estate and is further an inam estate. I am not to be understood as saying that any order passed in the exercise of the jurisdiction vested in this court under Art. 226 of the Constitution can be set aside in exercise of the inherent powers of this court. All I am saying is that the nature of the order that was passed on 10-1-1956 and the special circumstances of the case, principally the subsequent change in legislation, require of this court to provide for the change that has been brought about by subsequent legislation and to see that the real questions at issue between the State and the respondent are disposed of as expeditiously as possible by the authorities competent to dispose of those questions.

(10) The petition is allowed. The writ issued on 10-1-1956 in W. P. No. 490 of 1954 and the directions given therein will stand vacated, which in effect means that the questions that had been pending before the Assistant Settlement Officer and which now stand transferred to the Tribunal will be proceeded with by the Tribunal that has exclusive jurisdiction to determine the questions at issue. No order as to costs.

(11) Petition allowed.