

(1967) 07 MAD CK 0016
In the Madras High Court

A.V.M. Subbaraju

APPELLANT

Vs

A. Balanarasimhaiya and Others

RESPONDENT

Date of Decision : 26-07-1967

Acts Referred:

Citation : (1968) 1 MLJ 182

Hon'ble Judges : P. Ramakrishnan, J

Bench : Division Bench

Judgement

P. Ramakrishnan, J.—The write petition is filed under Article 226 of the Constitution by one A.V.M. Subbaraju, son of Mallikarjunayya.

Mallikarjunayya filed E.A.T.A.S. No. 2 of 1962 before Estate Abolition Tribunal, Chingleput, against the order of the Additional Assistant

Settlement Officer, Chittoor in S.R. No. 361/UT/56 an application u/s 15 of the Estates (Abolition and Conversion into Ryotwari) Act (XXVI of

1948) read with Sections 13 and 14 of the said Act for the grant of a ryotwari patta to the private lands of the landholder, in the under-tenure

estate of Chengalvapura Agraharam, Village of Triuttani Taluk. The Assistant Settlement Officer rejected the application on the main ground stated

from his order, namely that the landholder's own evidence in the case showed that the lands were being leased out to ryots ever since their

purchase and that there was no personal cultivation by the landholder or by his predecessors-in-title at any time. Against the above order, an

appeal was filed by Mallikarjunayya, who was one of the landholders owning a share in the landholders' rights in the under-tenure village.

Mallikarjunayya died during the pendency of the appeal before the Tribunal, and his son Subbaraju, the present petitioner, was impleaded as his

legal representative. The Tribunal in its judgment has made reference only to the counter filed by two objectors, namely, Balanarasimhiah and

Chokkalinga Reddy, Balanarasimhaiah claimed two items under a patta granted to him by the Estates Abolition Tribunal, Chittoor on 30th

October, 1957. Chokkalinga Reddy claimed to have purchased items 3 and 4 in Court auction in execution of a decree of the District Munsif's

Court of Sholinghur. It is urged before me by the learned Counsel Sri Manivarma for the respondents in this writ petition, that the other objectors

also filed counters before the Tribunal, but the Tribunal has made only a note that none of the objectors appeared before the Assistant Settlement

Officer to contest the claim of the landholder. The Tribunal, however, referred to the ground which the Assistant Settlement Officer himself had

relied upon, namely, the absence of evidence regarding personal cultivation by the landholder, and the fact that he appeared to have been leasing

out the lands to ryots on waram rent basis. The Tribunal also relied on the fact that the documents of sale produced by the landholder, Exhibits A-

1 to A-3, containing a description of the lands, did not properly tally with the items in dispute in the appeal, and the necessary correlative statement

supplied to him also did not clear up the difficulties sufficiently. These observations show that the Tribunal was of the opinion that in the absence of

evidence regarding personal cultivation by the landholder and in the absence of proper correlation he has failed to discharge the onus laid upon him

to prove that the lands were private lands. But it is urged by the learned Counsel Sri Parasaran appearing for the petitioner herein, who was the

appellant before the Tribunal, that the stress laid on the aspect of personal cultivation by the landholder takes into account only one of the

requirements of proof in such cases which have been laid down u/s 12 of the Estates (Abolition and Conversion into Ryotwari) Act, XXVI of

1948, namely, the requirements stated in Section 12(b), but even without such evidence of personal cultivation, if the landholder makes out the

ingredients required u/s 12(a) of the Act read, with Section 3(10)(b) of the Estates Land Act, it would be sufficient for discharging the onus of

proof. This aspect of the matter has been referred to in an unreported judgment of this Court by Anantanarayanan, J., (as he then was), where the

learned Judge observed in S.M.K.P. Peer Masthan Rowther v. Ckinnaiah Kone and Ors. W.P. No. 41 of 1959

On the contrary, the landholder really seems to have claimed that these lands were his pannai or private lands, within the meaning of Section 12(a)

of the Act alone. Section 12(a) takes us to the definition of private land in Section 3(10)(b) of Madras Estates Land Act (I of 1908). Even in

Section 3(10)(b) there are several sub-clauses of which Sub-clause(1) is alone relevant, namely, "the domain or home-farm land of the landholder,

by whatever designation known, such as Kambattam, khas, sir or pannai." For this definition to apply, it is not necessary that the lands should have

been actually cultivated at any time. It is sufficient that they are cultivable lands, and that they are within the cowle grant of the under-tenure village.

2. If this principle had been borne in mind, the main emphasis laid by the Assistant Settlement Officer on the aspect of personal cultivation and the

emphasis which is also found laid on the same aspect by the Tribunal, would not have been there. On the other hand the aforesaid Tribunals should

have also directed themselves to the question whether the requirements of Section 12(a) read with Section 3(10)(b) of the Estates Land Act have

been satisfied in this case. Incidentally, it was argued by the learned Counsel for the petitioner, that Balanarasimhaiya who claims to have obtained

a patta from the Estates Abolition Tribunal, Chittoor, possibly might have obtained patta on the footing that he was a landholder, because, if patta

has to be obtained for ryotwari lands, it must be obtained u/s 11 from the Settlement Officer and not from the Tribunal. But it is equally possible that

in appeal by the landholder before the Estates Abolition Tribunal, Balaharasimhaiya might-have appeared as a respondent and succeeded in

proving his claim that the land was ryoti and the question of grant of patta to him might have arisen as an incidental matter, but what actually

happened in this connection again requires clarification with reference to the order of the Estates Abolition Tribunal, Chittoor, on 30th October,

1957. But, if, for any reason, Balariarasimhaiya got patta from the Tribunal on the footing that it was landholders' private land, it might be a

ground which would have relevancy in connection with the claim of the petitioner in this case. The learned Counsel for the petitioner also urges that

before the Settlement Officer who actually recorded evidence, the land-holder gave oral evidence regarding the continuous treatment of the land at

all material times as his private land, and the utter absence of any evidence on the part of the objectors showing the exchange of patta and

muchilika and also the absence of any evidence of transactions in respect of the lands by the objectors, like sales, mortgages and so on during a long period of time. These facts will have their place, if the matter is considered by the lower Tribunals of fact in their proper perspective and, as mentioned already, omitting the special emphasis laid upon the requirement of Section 12(b) of the Act when, in a case like the present, the landholder appears to have attached greater importance to the requirement of Section 12(a). For the aforesaid reasons I am of the opinion that the order of the Tribunal requires reconsideration.

3. The learned Counsel appearing for the respondents-objectors requested that, in the event of a remand, an opportunity might be given to the respondents to appear and present their objections before the lower Tribunal and, the Tribunal may also consider the question of taking additional evidence if such evidence is required for a proper disposal of the question at issue. This request appears to be reasonable and it is allowed. The writ petition is allowed, the order of the Tribunal is set aside and the matter is remitted to the Tribunal for fresh disposal in the light of the observations mentioned above.

4. No order as to costs.