

(2011) 02 MAD CK 0034

In the Madras High Court

Case No : Criminal O.P. No. 11078 of of 2010

C. Kasthuri

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 188, 218, 219
Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 — Section 12, 12(1), 15(1), 3

Citation : (2011) 02 MAD CK 0034

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Advocate : R. Sankarasubbu, for the Appellant; S. Rajakumar, Government Advocate (Crl. Side), for the Respondent

Judgement

G.M. Akbar Ali, J.—By consent of both sides, the matter is taken up for final disposal. The petition is filed seeking a direction to call for the

records in Cr. No. 207 of 2010 on the file of the Inspector of Police, J.3 Guindy Police Station, Chennai and quash the same.

2. The Petitioner is the sole accused in the complaint given by the Tahsildar, Mambalam, Guindy Taluk, for the alleged offence u/s 188, 218 and

219 IPC and Section 3 of TNPPDL Act. The Petitioner was the Settlement Officer in the Office of the Director of Survey and Settlement,

Chepauk, Chennai. The appointment was under the provisions of The Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act 1948

(Act 26 of 1948) (hereinafter referred to as ""Act"").

3. The Petitioner was working in the capacity of Settlement Officer from 10.3.2008 to 19.9.2008. In the year 2002, one Mrs Kanees Fathima and

eight others and also one Humayun Zama gave petitions u/s 12(d) and Section 15(1) of the Act for issuance of patta for the land comprised in

block 6 Town Survey No. 1 of Guindy, Chennai. They claimed that originally the land belonged to erstwhile Zamindars, Haji Ahmed Ali and

Kasim Ali, who were the Zamindars of Alandur and Adayar village. Their petitions were pending from 2002. There were several writ petitions to

consider the representations and finally in WP No. 8764 of 2007, this Court by order dated 9.3.2007 directed the Settlement Officer as follows:

Having regard to the facts and circumstances of the case, this writ petition is disposed of with a direction to the fourth Respondent, Settlement

Officer, Chepauk, Chennai to consider the representation of the Petitioner dated 12.2.2002 filed under the Tamil Nadu Estates (Abolition and

Conversion into Ryotwari) Act pending before him under reference No. 8924 of 2003 and dispose of the same on merits and in accordance with

law and without reference to the delay in filing the said application. Such order shall be passed within a period of eight weeks from the date of

receipt of copy of this order or on production of the same by the Petitioner.

4. The Petitioner, who was the Settlement Officer at the relevant point of time, enquired into the matter on various dates and passed an order

dated 1.9.2008 for issuance of patta for certain extent and also rejection of patta to certain extent. On 22.10.2008 the Principle Secretary and

Commissioner of Land Administration, Chepauk, addressed the Principle Secretary to Government, Revenue Department to file an appeal in

accordance with the provisions of the Act. By G.O (ID) No. 631 Revenue (SS.I) Department dated 17.11.2008 the Government nominated the

Additional Advocate General to prefer an appeal before the Estate Abolition Tribunal. Meanwhile, the Tahsildar of Mambalam and Guindy Taluk

filed two writ petitions before this Court against the beneficiaries under the original order for the relief of Certiorari to quash the order dated

1.9.2008. The Tahsildar had also given a complaint dated 17.4.2010 to the 1st Respondent alleging certain offences against the Petitioner, who

was the Settlement Officer, who passed an order dated 1.9.2008.

5. The case was registered in Cr. No. 207 of 2010 for the alleged offences as stated earlier and it is pending investigation and the Petitioner is

before this Court to quash the proceedings.

6. The 1st Respondent has filed Counter, in which it is stated as follows:

The defacto-complainant viz., Tmt. Rajeswari Ganapathiammal stated that Tmt.C. Kasthuri while holding the post of Settlement officer, Chennai

has thrown to wind all rules, norms and procedures and violated the orders issued by this Court and passed order in the proceedings cited to issue

Ryotwari patta to the Petitioner in Adayar village.

7. It is also stated in the counter that as Tmt.C. Kasthuri, the then Settlement Officer has passed illegal and violative orders and thereby gifted the

prime-located and valuable land now under the possession of the King Institute.

Therefore, the the settlement officer has committed criminal offences.

8. Based on the complaint one Jayachandran, the then Inspector of police took up the initial investigation and he asked the defacto-complainant to

furnish the Rules and Regulations, the Order passed by this Court and the other connected records, but it is still awaited. Due to the transfer of the

above investigating officer, the 1st Respondent who is the officer presently investigating the case, continued the investigation. It is also stated that

many more witnesses have to be examined .

9. Mr. R. Sankara Subbu, learned Counsel for the Petitioner submitted that the Petitioner, who was the then Settlement Officer, under the

provisions of the Act, passed an order in pursuant to the direction issued by this Court and had discharged her duty as a Government Officer. The

learned Counsel pointed out that the order passed u/s 12(1) of the Act is an appealable order which will not attract any IPC offence. The learned

Counsel pointed out that the complaint is mis-conceived and it is given only to harass the Petitioner who was an quasi Judicial authority.

10. On the contrary, Mr. S. Rajakumar, learned Govt. Advocate (Crl. Side) would submit that the Petitioner has violated and flouted all norms in

issuing ryotwari patta for the Government Poromboke land which is worth about several crores of rupees. The learned Government Advocate

would submit that the land allotted to King Institute of Guindy, Health Department and various other Departments have been transferred to private

parties.

11. The learned Govt. Advocate would further submit that this Court need not interfere at this stage as the 1st Respondent is bound to take

cognizance of the offence and investigation must be allowed to be continued for its logical conclusion.

12. Heard and perused the materials available on record.

13. The fact that the Petitioner was the Settlement Officer in the Office of the Directorate of Survey and Settlement and some private persons

claiming legal heirship to erstwhile Zamindars, Haji Ahmed Ali and Kasin Ali, the Zamindars of Alandur and Adayar village, had applied for

granting of patta under the provisions of the Act is not disputed. It is also not disputed that those persons have approached this Court in various

writ petitions and in WP No. 8764 of 2007 this Court passed an order as stated earlier.

14. The Petitioner being, a quasi judicial authority, passed an order dated 1.9.2008 for granting of ryotwari patta for certain extent and denied

patta for certain extent. Admittedly, the King Institute of Guindy which was established in the year 1899 was brought under the Directorate of

Medical Education in the Health and Family Welfare Department of Government of Tamil Nadu and was allotted lands in the same town survey.

Apart from this, various Government Offices and an University is also situated in the land in dispute. However, the Settlement Officer had passed

an order and the merit of the order is not under consideration before us.

15. The Government has taken appropriate steps to prefer an appeal against that order. The Tahsildar, Mambalam, Guindy Taluk had also filed

two writ petitions to quash the entire proceedings dated 1.9.2008. However, on 17.4.2010, a criminal complaint has been given against the

Petitioner for the above said alleged offences. The entire allegations in the complaint which reads as follows:

The primary factors require to be examined while perusing the claim for Ryotwari Patta u/s 12(a)(i) of the Tamil Nadu Act are as follows:

(1) The claimant should be the land holder of the Zamindar estate in respect of the subject land; (ii) The subject land should be immediately before

the notified date, belonged to the claimant as private land within the meaning of Section 3, Clause (10(a) of the Estates Land Act.

(2) The Settlement Officer had not analysed by keeping the above points as to whether the claimants are the land holders as per the provisions

detailed above.

(3) The Settlement Officer had also failed to secure and peruse the settlement records/compensation records and other connected settlement files

as to whether the claimants are the legal heirs of the Zamindars and they are the land holders require to be considered on merits.

(4) The Settlement Officer has also failed to consider the definition provided in Section 3 Clause (10)(a) of the Estates Land Act before deciding the suit lands as private lands.

(5) The Government in their order Ms. No. 714, Commercial Taxes and Religious Endowment Department, dated 29.6.1987 have ordered that

the fresh claims for Ryotwari Patta under the provisions of the Tamil Nadu Estate (A&C into R) Act should not be entertained after 20.8.1987.

(6) As per the provisions of the Tamil Nadu Estate (A&C into R) Act, 1948, the Settlement officer has no powers to take decisions as per Section

12 (1)(1) of the Act, Since the powers of the Settlement Officer does not have even the revisionary powers and the appeal on the orders passed

by the Assistant Settlement Officer was with the Tribunal alone.

(7) Therefore, the orders passed by the settlement officer in the proceedings cited is unlawful, beyond the jurisdiction extend to that post.

(8) The Settlement Officer has failed to ascertain the stage of the case pending before the Hon"ble High Court, Madras as detailed by the King

Institute.

16. In the complaint, it is also alleged that

In nutshell, Tmt.C. Kasthuri while holding the post of the Settlement Officer, Chennai has aired all rules, norms and procedures and violated the

orders issued by the Hon"ble High Court, Madras and passed orders in the proceedings cited to issue Ryotwari patta to the Petitioners in Adyar

village, Block 6, S. No. 1/B, admeasuring 5 cawnies 11 grounds 775 sq.ft and block 9, S. No. 2B Part and measuring 2 cawnies, 5 grounds 1200

sq.ft from Government poramboke. C. Kasthuri, then Settlement Officer, Chennai had passed illegal and violative orders and thereby gifted the

prime located and valuable land now under the possession of the King Institute. Hence I request that a criminal case may be registered against

Tmt.C. Kasthuri, the Settlement Officer, Chennai now under suspension for her above detailed action and thereby made and administration in an

embarrassing position.

17. In R.S. Raghunath Vs. State of Karnataka and another, , the Apex Court has clearly laid down the guidelines, where the inherent powers u/s

482 of the Court could be exercised.

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law

enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s

482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such

power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be

possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list

of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their

entirety do not prima facie constitute any offence or make out a case against the accused.

18. In my considered view, the allegations made in the complaint which is stated above are the primary factors required to be examined while

pursuing the claim for ryotwari patta. The allegations narrated are in the nature of the appeal grounds on which the order dated 1.9.2008 is

challenged.

19. The actual allegation is that the Petitioner has violated rules, norms and procedures and issued ryotwari patta and thereby gifted the prime and

valuable land to third parties and has put the Government in an embarrassing position.

20. The first Respondent has taken cognizance of offences under Sections 188, 218 and 219 IPC and Section 3 of TNPPD Act. Sections 188,

218 and 219 IPC read as follows:

188. Disobedience to order duly promulgated by public servant Whoever, knowing that, by an order promulgated by a public servant lawfully

empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession

or under his management, disobeys such direction, Shall, if such disobedience

causes to tender to cause obstruction, annoyance or injury, or risk of obstruction, annoyance of injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; And if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation-It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219. Public servant in judicial proceeding corruptly making report, etc., contrary to law Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

21. This Court is at a loss to understand how the allegations made in the FIR constitute such cognizable offences. On the face of the allegations, nothing is made out to constitute any offence. The allegations made in the first information report, even if they are taken at their face value and

accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Continuance of such proceedings is

nothing but an harassment, which is liable to be quashed. Accordingly, the proceedings in Cr. No. 207 of 2010 on the file of the Inspector of

Police, J.3 Guindy Police Station, Chennai is quashed.

22. In the result, the criminal original petition succeeds and the proceedings in Cr. No. 207 of 2010 on the file of the Inspector of Police, J.3

Guindy Police Station, Chennai is hereby quashed.