

(1984) 01 MAD CK 0043

In the Madras High Court

Case No : Writ Appeal No"s. 305 to 308 of 1979

Charles Hereward Simpson and Others

APPELLANT

Vs

Commissioner for Land Revenue Land Reforms, Madras and
Others

RESPONDENT

Date of Decision : 05-01-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Transferred Territory Ryotwari Settlement Act, 1964 — Section 21(2)

Citation : AIR 1985 Mad 307 : (1984) 97 LW 305

Hon'ble Judges : Nainar Sundaram, J;Gokulakrishna, J

Bench : Division Bench

Advocate : Chellaswamy, for the Appellant; M.A. Sadanand, Government
Advocate, for the Respondent

Judgement

Sundaram, J.—These writ appeals are directed against the common order passed by S. Natarajan, J., in Writ Petitions Nos. 682, 695, 704

and 707/78. The appellants are the petitioners in the writ petitions and the respondents are the respondents in the writ petitions. We shall refer to

the parties as they stood arrayed in the writ petitions for the sake of convenience.

2. The writ petitions came to be filed under the following circumstances, as set out in the order of the learned single Judge. The petitioners applied

for pattas under the Tamil Nadu (Transferred Territory) Ryotwari Settlement Act 30/64, hereinafter referred to as the Act, for the lands, covered

by title deed Nos. 3 and 15 granted by the Government of the erstwhile Travancore State to their great grand-father one Rev. John Cox

somewhere in the years 1866 to 1875 for the purpose of coffee cultivation. Rev. John Cox established A coffee estate and built residential and

other buildings. Subsequently, due to poor yield or drought or for other allied reasons, the Travancore Government abolished the tax on lands

under a Royal Proclamation. Some years after the coffee plantation, the crops withered and dried and other crops like cardamom and tea were

raised on the lands. The boundaries for the whole extent of the lands were always kept properly marked and pathways were laid and maintained

by Rev. John Cox and his successors-in-interest. The lands were in the continuous enjoyment since then, up to the present days by the

descendants of Rev. John Cox the petitioners belonging to the third generation. The petitioners derived title to the properties and possession over

them under oral partition effected by their father. The Assistant Settlement Officer, Nagercoil, conducted preliminary enquiry and submitted his

report to the Settlement Officer, Madurai. The Settlement Officer, Madurai returned the reference to the Assistant Settlement Officer and

instructed him to call for the original documents from the parties, to record their statements and to have a joint inspection of the lands with the

Assistant Director of Surveys and Land Records, Nagercoil. Thereupon, the original documents were called for and examined by the Assistant

Settlement Officer and the statement of the petitioners father, Charles Herald (Hereward?) Simpson was recorded and inspection of the properties

was made on 14-12-72 by the Assistant Settlement Officer and the Assistant Director of Survey and Land Records, Nagercoil, accompanied by

the survey staff and the village officer of Azhagiapandipuram. A combined sketch based on the joint inspection was prepared and thereafter,

further enquiry was held by the Additional Assistant Settlement Officer II, Nagercoil under the Act. Notices were served on the interested parties

and a copy of the notice was also published in the village. The Additional Settlement Officer, 11 Nagercoil also inspected the lands on 7-3-73. In

the enquiry, Charles Herald (Hereward?) Simpson was examined as P. W. 1 and Elizabeth Anne (petitioner in W. P. 704 of 78) was examined as

P. W. 2. The Tahsildar Thovalai was examined as R. W. 1. The Additional Settlement Officer by his order dt. 10-3-73 held that the lands for

which patta was claimed and identified by the survey staff in the sketch prepared by them, are in the possession and ownership of the successors-

in-interest of Rev. John Cox and hence, the said officer ordered issue of ryotwari patta under the Act for the lands covered by T. D. Nos. 3 and

1-5 in favour of the five children of Charles Herald (Hereward?) Simpson. The District Forest Officer, Tirunelveli (South) Division, Palayamkottai,

the third respondent, filed appeal against the said order to the Director of Settlement, Nagercoil. The Director of Settlement by his order, dt. 20-

12-1975, dismissed the appeal. The third respondent filed a revision petition before the Board of Revenue, the first respondent, against the said

order. The Board of Revenue, by its order, dated 5-7-76, set aside the orders of the Director of Settlement and remanded the matter for

reconsideration. The Director of Settlement, Madurai, the second respondent, by his order dt. 25-7-77, allowed the appeal and dismissed the;

claim of the petitioners for patta under the Act. The petitioners filed a revision petition against the said order before the first respondent, but the first

respondent, by order dt. 31-1-78, dismissed the revision petition. Questioning the correctness of the said order the five children of Charles Herald

(Hereward?) Simpson came to this Court by way of four writ petitions.

3. S. Natarajan, J., who heard the writ petitions, assessed the matter with reference to all the relevant materials and pinned that the contentions

raised by the petitioners cannot be considered in writ jurisdiction. The learned Judge has adverted to the controversy, which practically covered

the aspects of title, identity, possession and boundaries of the lands in question for which patta was asked for by the petitioners and stated that they

are matters which can only be considered by a civil court with reference to evidence placed before it in support of the rival claims of the parties.

Even in the impugned order of the first respondent, we find, the petitioners have been denied patta under the Act only on the ground that they have

not established by evidence their claim of title and possession over the lands in question. The District Forest Officer. the third respondent seems to

have put forth a plea that the lands in question have been notified as forest reserve and the petitioners cannot claim title over them. These

contentions, as pointed out by the learned single Judge, do touch upon factual aspects concerning title, identity, possession and boundaries and

other similar aspects. In this, view, it can be legitimately said that the resolution of the controversy has got necessarily to be done only by the civil

Court and thereafter, it is for the petitioners to approach the authorities under the Act to" seek appropriate orders for patta over the lands in

question. If this is the view to be taken" and we are inclined to take the said view then, we could not interfere in writ jurisdiction, as rightly expressed by the learned single Judge. But, Mr. S. Chellaswami, learned counsel for the petitioners would submit that the authorities under the Act, by the various orders culminating in the last order impugned in the writ petitions, have practically adjudicated upon these aspects and reasoning expressed in the said orders as well as the order of the learned single Judge may be put against the petitioners if they choose to resort to civil process to establish their right over the lands" Learned counsel would further submit that there are ample satisfactory materials to establish the right of the petitioners over the:- lands for which patta was asked and there were earlier civil proceedings also which can be pressed forth to support the case of the petitioners on the ground of res judicata. In our view, the controversy is one which has got to be properly adjudicated upon by the civil court only and not under the machinery of the Act. Mr, S. Chellaswami, learned counsel for the petitioners, also points out that there is no machinery under the Act to decide the question of title and other allied questions when a dispute arises as between two rival claimants, as in the instant case, The question is as to whether the petitioners are entitled to the lands in question, so as to claim patta for them under the Act. There are disputes over their claims. The third respondent wants to deny the claim of the petitioners on the ground that the lands have been taken over as forest lands and they form forest reserves. The first respondent, in the impugned order, has rightly opined that unlike the Legislations, for introduction of ryotwari settlement in erstwhile estates, the Act contains no provision for determination of rights of parties, over which a controversy has arisen in the present case. This is the correct statement and this could not be impeached. Our attention has not been drawn to any provision of the Act which provides for and contemplates adjudication of disputes of the present nature. It was contended on behalf of the respondent that the civil Court's jurisdiction is excluded"" virtue of S. 21(2) of the Act. That provision excludes the jurisdiction of the civil court only in respect of any question which by, or i under the Act is required to be decided or dealt with by the authorities or officers under the Act. But, as pointed out above. there is no machinery as such under the Act to decide a controversy of the present nature. This is the it stand rightly

expressed by the first respondent himself in the impugned order. If this is so, we could not subscribe our support to the contentions put forth on behalf of the respondents that the civil Court's jurisdiction is excluded. An exclusion of the jurisdiction;- of the civil court is not readily to be inferred unless certain well accepted conditions stand satisfied. Where the statute gives a finality to the orders of the special Tribunals, the test must. be to find out whether the statute has provided the remedy, which the civil court would normally do in a suit. We do not find I the remedy to establish right, title and interest over the lands, when there are rival claims, has been provided for under the provisions of the Act and no attempt was made before us to demonstrate this. Hence, we have to hold that there is no ousting of the jurisdictions of the civil Court to decide disputes of the present nature. But as expressed by Mr. S. Chellaswami, learned counsel for the petitioners, there is a possibility that the reasonings and findings, rendered by the authorities under Act. in all their orders culminating in the impugned order as well as the reasonings expressed by the learned single Judge, may be put against. the petitioners in case they resort to the appropriate civil process. Taking note of this position, we feel obliged" to make it clear that none of the aforesaid" reasonings and findings shall stand in the way of the petitioners in case they resort to the civil process to establish their right, title and interest over the lands in question. It is up to the petitioners, after they succeed in the civil process, to approach the authorities under the Act for appropriate orders. Hence, we dismiss all the writ appeals and at the same time observe that none of the reasonings and findings expressed in the orders of the: authorities under the Act as well as that of the learned single Judge shall stand in the way of the petitioners or be put against them my case they resort to civil process to establish their claim,, Mr. S. Chellaswami, learned counsel" for the petitioners, states that pending the writ petitions as well as pending the writ appeals, there were orders maintaining status quo and this position may be continued for sufficient time to enable the petitioners to seek the civil process and have their rights protected by obtaining appropriate orders from the civil court. This is a reasonable request and we are inclined to accede to the same. The petitioners shall file the requisite suit or suits, if they are so advised, within three months from today and till then, the orders of status quo passed pending the writ appeals will continue to be

operative. We make no order as to costs in these writ appeals.

4. Appeals dismissed.