

(1999) 04 MAD CK 0107
In the Madras High Court

Jathavan and Others

APPELLANT

Vs

The Special Commissioner and Commissioner for Land
Administration and Another

RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:

Citation : (1999) 2 LW 648 : (1999) 3 MLJ 185

Hon'ble Judges : T. Meenakumari, J

Bench : Division Bench

Judgement

T. Meenakumari, J.—The writ petition is for the issue of writ of certiorari to call for the records of the first respondent authority made in his D.Dis. No. K.P.P. No. 4/90, dated 28.6.1990 and quash the same.

2. The dispute in this writ petition relates to the lands in Ayanavaram village comprised in T.S. Nos. 12 and 27. The case of the petitioners is that their mother purchased the property in question under 4 different sale deeds all before the year 1948 i.e., before the Act XXVI of 1948 came into force. However, there were rival claimants by Chandrasekaran and Jegathambal who also applied for a patta in respect of the lands in question. It is also the case of the petitioners that during the final settlement enquiry in Ayanavaram village in respect of T.S. Nos. 12 and 27 and other survey numbers, the claim of the petitioners was rejected and an extent of 0.62 cents was held to be as water spread poromboke. It is also their case that their mother Chinnammal filed a revision petition u/s 5(2) of Act XXVI of 1948 claiming patta for the lands in T.S. Nos. 12 and 27 of Block No. II, Ayanavaram village by enclosing the S.L.R. extract and certified copy of the final settlement enquiry Tahsildar's order No. 1002/59 dated 5.10.1959. By order dated 26.8.1966, the director of Survey and Settlement, Madras, has set aside the final settlement enquiry order in respect of the lands in question and remanded the case to the Assistant settlement officer for detailed enquiry and disposal, who passed orders dated 30.9.1971 granting patta in favour of the writ petitioners for 80 cents in S. No. 12-A and 60 cents in T.S. No. 27, Block No. 2,

Against this order, One Ansammal filed a revision petition which was also rejected by orders dated 10.9.1981 by the Special Commissioner and Commissioner for Land Administration in R.P. No. 7 of 1979.

3. At this stage, it is to be noted that the learned Counsel for the petitioner has filed the chronological events of the case which has become a part of the record. It has been stated therein that while dismissing the revision, the Special Commissioner has made an observation that grant of patta to the respondents (writ petitioners) would be examined separately under the suo motu powers u/s 7 of the Act. Accordingly, on 29.9.1981, a show cause notice was issued under the powers vested u/s 7(c) of the Act to show cause why the patta issued to them by the Assistant settlement officer dated 30.9.1971 should not be cancelled.

4. Against the order of rejection, the said Ansammal filed W.P. No. 282 of 1982 in this Court. By order dated 1.3.1990, this Court remanded the said Revision Petition No. 7 of 1979 to the first respondent to rehear and dispose of the matter on merits, who by his order dated 28.6.1990 disposed of the revision petition rejecting the claim of the said Ansammal. It was stated therein that the said Ansammal cannot claim patta u/s 11(4) based on an order of bare injunction and that she did not produce any receipts for payment of F.C.R. or old patta or any other valid documents to prove her possession before the notified date viz., 1.10.1951. At the same time, the petitioner's claim was also rejected. Aggrieved by the same, the present writ petition is filed.

5. It was argued by the learned Counsel for the petitioners that the first respondent without properly appreciating the facts and law cancelled the patta granted in favour of the petitioners. He has further argued that the second respondent has issued the patta to the petitioners herein only after due enquiry and therefore, it is not proper to cancel the pattas. The learned Counsel for the petitioners also contended that the first respondent authority while rejecting the claim of the said Ansammal over the disputed land ought to have confirmed the order of the second respondent granting pattas in favour of the petitioners; that the first respondent has no power to invoke the suo motu powers u/s 7 nearly after a period of ten years. The first respondent has cancelled the patta granted in favour of the petitioners on the ground that they have not proved their possession. It is further argued that the first respondent ought not to have directed the authorities to register the land as Government water spread poromboke in spite of the fact that the second respondent and other revenue officials while personally inspecting the area also found that there is no water spread poromboke in that locality and that the said land is not water spread poromboke. It is their further contention that the first respondent did not take into consideration the report filed by the Tahsildar while directing the authorities to register the land as water spread poromboke. It has been stated that the petitioners are in possession of the lands in question and are doing cultivation there. The learned Counsel has attacked the impugned order on the ground that the first respondent did not take into consideration all the relevant facts

mentioned in the Tahsildars report to the effect that the petitioners were in the continuous possession and erred in registering the lands as water spread poromboke. Learned Counsel for the petitioners strenuously contended that the first respondent has not taken into consideration all the relevant G.Os. viz., G.O.Ms. No. 1312, Revenue, dated 26.7.1967; G.O.Ms. No. 925, Revenue, dated 3.11.1967 and G.O.Ms. No. 641, Revenue, dated 28.2.1970 before passing the impugned order since all the above said Government orders make it clear that people like the writ petitioners though are not entitled for patta under the Act, are entitled for a patta outside the Act if they otherwise prove the possession of the land. Thus, contending, the learned Counsel for the petitioners sought the writ petition to be allowed.

6. The respondents have filed counter stating that the impugned order was passed only after hearing all the interested parties and after carefully considering the merits of the case. It is also stated that simply because the claim of Thirumathi Ansammal has been rejected, it cannot be said that the order of the second respondent should be confirmed. On the other hand, the claim of the petitioners should be decided on its own merits. As the writ petitioners have not proved their claim either u/s 11 (a) or under G.O.Ms. No. 1300, Revenue, dated 30.4.1971, the order of the Assistant settlement officer was set aside. It is also contended by the respondent that even assuming that it is not a Government water spread poromboke, the writ petitioners have to prove that it is a ryoti land properly included in their holding or ought to have been included in their holding. But in the instant case the land in T.S. No. 27 was not included in their holding. The entries in S.L.R. and S.F. correlates this fact. The respondents have also stated that as the petitioners have not satisfied the requirements of Section 11(a) they are not entitled to patta both u/s 11(a) or under G.O.Ms. No. 1312, Revenue, dated 26.7.1967. Thus contending, the respondents have sought the writ petition to be dismissed.

7. After hearing the learned Counsel on either side and after perusing the relevant material I have once again gone through the entire record. The learned Counsel for the petitioners in support of his case has relied on the following judgments of the Andhra Pradesh High Court in Koyya Veeraju v. Mandal Officer, Gollaprolu (1997) 3 A.W.R. 229, Smt. P. Mangamma and Others Vs. The Women's Co-operative Housing Society Ltd. and Others, , Lingareddy Ramakrishna Reddy and Others Vs. Director of Settlements and Others, . Learned Counsel for the petitioners has also relied on the decision of the Supreme Court in The State of Gujarat Vs. Patil Raghav Natha and Others, . Learned Counsel has also relied on the decision of this Court in The State of Madras v. R.M. Chettiar and Ors. 1996 1 M.L.J. 402. Learned Counsel for the petitioners has relied on the decision of the Supreme Court in State of Gujarat v. Patel Reghav Natha and Ors., in support of his contention that suo motu powers should be exercised within a reasonable time i.e., few months, further while ordering, reasons must be given. Dealing with the revisional powers of the authorities under the Act, the learned Counsel has relied on the decision of the

Andhra Pradesh High Court in Koyya Veeraju's case (1997) 3 An.W.R. 229, wherein it has been held as follows:

Dealing with the revisional powers of the authorities either under the Act in question or under similar Acts or similar provisions available under other allied Acts, the Supreme Court as well as this Court have laid down the law to the following effect;

The Supreme Court in the case of State of Gujarat v. Patel Reghav Natha, while explaining the power of Commissioner to revise the order made u/s 65 and the effect of limitation, three questions were answered as follows viz., the revisional powers must be exercised within a reasonable ! time viz., within a few months, while ordering the authorities shall give reasons for its conclusion, the Commissioner while exercising his powers conferred under Sections 65 and 211 of Bombay Land Revenue Code (5 of 1879) cannot decide questions of title against occupant. The relevant discussion is at paras 11, 12, 13 and 14 which reads as follows:

11. The question arises whether the Commissioner can revise an order made u/s 65 at any time. It is true that there is no period of limitation prescribed u/s 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

12. it seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act u/s 211. u/s 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations atleast within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961 i.e., more than a year after the order and it seems to us that this order was passed too late.

Following the decision of the Supreme Court, the Division Bench of the Andhra Pradesh High Court in Smt. P. Mangamma and Others Vs. The Women's Co-operative Housing Society Ltd. and Others, , has held that the proceedings cancelling the patta by invoking the powers to revise nearly after 28 years is arbitrary and unreasonable. Learned Counsel for the petitioners has further relied on the decision of this Court in R.M. Chettiar's case 1966 M.C.J. 402, to substantiate his claim that where the Government claims that the Athupadugai

vests u/s 3 of the Act as river poromboke, it must clearly adduce evidence to show the basis on which the claim is made. Basing on the above, learned Counsel for the petitioners has contended that since the Government could not adduce any evidence in support of their claim that the land in question is water spread poromboke, registering the land as poromboke is illegal and consequently cancelling the pattas is also bad in law.

8. A learned single Judge of the High Court of Andhra Pradesh in Lingareddy Ramakrishna Reddy and Others Vs. Director of Settlements and Others, , has held as follows:

It is a question of reasonable period of limitation within which that power should be exercised where the question is one of exercising that power within a reasonable time and what is a reasonable period would undoubtedly be dependent upon the facts and circumstances of each case and the suo motu power must be exercised to advance the cause of justice and not to upset settled rights.

9. Learned Counsel for the petitioners also relied on another decision of the Supreme Court in Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others, , wherein the Apex Court has observed as under:

In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case.

10. In the decision relied upon by the learned Counsel for the petitioners in Smt. P. Mangamma and Others Vs. The Women's Co-operative Housing Society Ltd. and Others, , the Andhra Pradesh High Court has held as follows:

Cancellation of the said assignment of lands made by the Tahsildar by Collector in exercise of his revisional powers u/s 163-B on the premise that assignment was made without seeking approval of Collector, thirty-one years after assignment and after construction of pucca buildings investing huge sums of money by third parties, would result in irrational, unreasonable and violative of fair play in administrative action.

11. After going through the facts and circumstances of the case and the law on the subject, it can be held that the first respondent has not taken into consideration all the relevant facts, material, and the report of the Tahsildar and was not correct in directing the authorities to register the land in question as Water spread poromboke. In the instant case, the first respondent has exercised

his suo motu powers nearly after 10 years which is not a reasonable time as held by various courts in the decisions cited supra. In the circumstances, the impugned order is quashed. The writ petition is allowed without costs. However, the respondents are directed to consider the matter afresh in view of their contention that the petitioners are entitled to pattas even outside the scope of the Act according to the Government orders stated supra. The authorities have to now consider the issue afresh as to whether the petitioners are entitled for grant of pattas even outside the scope of the Act. The authorities are directed to take into consideration the Tahsildar's report while passing the orders afresh. Consequently, W.M.P. No. 27309 of 1990 is closed.