

(2007) 08 MAD CK 0117

In the Madras High Court

Case No : Writ Petition No. 20798 of 2005

K. Krishnan

APPELLANT

Vs

The Special Commissioner and Commissioner of Land
Administration, Land Administration Department, The
Assistant Settlement Officer and The Tahsildar

RESPONDENT

Date of Decision : 02-08-2007

Acts Referred:

Citation : (2008) 1 LW 497 : (2007) 5 MLJ 737

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

**Advocate : Hema Sampath, for P. Valliappan, for the Appellant; S. Gopinathan,
Additional Government Pleader, for the Respondent**

Judgement

A. Kulasekaran

1. The petitioner has come forward with this writ petition praying for a Writ of Certiorarified Mandamus calling for the records in Rc.

K1/12524/2005 dated 01.06.2005 on the file of the first respondent and quash the same as illegal, arbitrary and against law and restore the order

of the second and third respondents dated 20.07.2000 in Mu. Mu.(A2) 1138/2000

2. The case of the petitioner is as follows:

The lands comprised in Survey No. 657/4A3 to an extent of 10 acres situate in 129, Pallikaranai Village, Tambaram Taluk, Kancheepuram

District was originally classified as a Government Poromboke - Kazhuveli which was in possession and enjoyment of one Ramamoorthy, Son of

Thangavel. The petitioner has purchased the said property on 27.11.1970 from the said Ramamoorthy and ever since the said date, he is in

possession and enjoyment of the same and the third respondent also issued "B"

memo in his name; that considering the uninterrupted possession of the petitioner for more than 30 years, the Assistant Settlement Officer, Tiruvannamalai, who is the proper authority as per circular issued by the Special Commissioner, Land Administration in E3 12970/90 dated 29.04.1991 and also his letter in K1. 50081/99 dated 08.05.2000, granted patta to the petitioner on 20.07.2000, after conducting enquiry classified the Government Poromboke - Kazhuveli into Government Poromboke. After issue of re-classification order in favour of the petitioner on 27.06.2002, the Commissioner, Land Administration had issued a direction to the Tahsildar to make necessary changes in the Village and Taluk records. Thereafter, in conformity to the orders of the Commissioner, Land Administration, the Tahsildar issued Patta to the petitioner on 11.09.2002. While things are such, the first respondent herein issued show cause notice dated 13.05.2005 invoking his suo-motu powers and called upon the petitioner to appear for an enquiry on 31.05.2005, which was served on him only on 26.05.2005, the petitioner was ill and indisposed of on that day, hence, he made a representation by way of telegram and letter both dated 30.05.2005 requesting the first respondent to adjourn the said enquiry to some other date, but refused to adjourn the case and the enquiry was conducted by the first respondent on 31.05.2005, who without affording proper opportunity to the petitioner passed an order dated 01.06.2005, which is challenged in this writ petition.

3. Mrs. Hema Sampath, learned Senior counsel appearing for the petitioner submitted that the petitioner has purchased the petition mentioned property on 27.11.1970 and considering his continuous possession only, the Assistant Settlement Officer had issued patta in his name and reclassification was ordered in favour of the petitioner and later the regular Tahsildar issued patta as such, it is not open to the first respondent to invoke his suo motu power canceled the reclassification; that the notice was served on the petitioner seeking assistance of a Bank Manager, which is unusual and strange; that the hearing was held within six days from the date of notice, hence, the petitioner unable to file objections referring to various documents relating to more than 30 years, thus, the first respondent has passed the impugned order on the next day i.e., 01.06.2005 hurriedly without affording sufficient opportunity to the petitioner. In any event,

the impugned order is not a valid order as the first respondent has no jurisdiction to invoke suo motu powers and prayed for quashing of the same.

4. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner, challenging the show cause notice

dated 13.05.2005 has filed WP No. 18206 of 2005 in which this Court originally granted interim stay which was subsequently vacated and the

said writ petition is still pending; that the first respondent has rightly passed the impugned order invoking his suo motu powers as custodian of

government land as well as the authority under the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act XXVI of 1948, hence,

interference of this Court is not warranted.

5. This Court carefully considered the argument of the learned Counsel for both sides and perused the records. The learned Senior counsel for the

petitioner advanced several arguments, but this Court is of the view that it is not the stage to go into the merits or jurisdiction of the first respondent,

since argument was advanced by the learned senior counsel for the petitioner that the first respondent has passed the impugned order without

affording reasonable opportunity to the petitioner. The first respondent followed a strange and unusual method of seeking assistance of Bank

Manager in service notice to the petitioner and even refused to grant adjournment.

6. The term opportunity includes all facts of time, place and personal conduct which make it corporally possible for a given person to have been

present and doing the act, and also all facts which make it less possible corporally for some other person to have been present and doing it Field's

law of Evidence, 10th Edition 1970, Volume 1. Page No. 498.

In Fedco (P) Ltd. and Another Vs. S.N. Bilgrami and Others, , the Honourable Supreme Court held in Para Nos. 8 and 9 thus:

8. The requirement that a reasonable opportunity of being heard must be given has two elements. The first is that an opportunity to be heard must

be given; the second is that this opportunity must be reasonable. Both these matters are justiciable and it is for the Court to decide whether an

opportunity has been given and whether that opportunity has been reasonable....

9. There can be no invariable standard for "reasonableness" in such matters except that the Court's conscience must be satisfied, that the person

against whom an action is proposed has had a fair chance of convincing the authority who proposes to take action against him that the grounds on

which the action is proposed are either non-existent or even if they exist they do not justify the proposed action. The decision of this question will

necessarily depend upon the peculiar facts and circumstances of each case, including the nature of the action proposed, the grounds on which the

action is proposed, the material on which the allegations are based, the attitude of the party against whom the action is proposed in showing cause

against such proposed action, the nature of the plea raised by him in reply, the requests for further opportunity that may be made, his admissions by

conduct or otherwise of some or all the allegations and all other matters which help the mind in coming to a fair conclusion on the question....

7. The above said facts disclose that the first respondent has not afforded reasonable opportunity to the petitioner. Hence, on that ground, the

impugned order is quashed, the matter is remanded back to the first respondent for fresh consideration. The petitioner is directed to appear before

the first respondent on 20.08.2007 and on such appearance, the first respondent is directed to give opportunity to the petitioner, if any, sought for

by him and pass orders on merits and in accordance with law, within a period of twelve weeks thereafter.

8. With the above direction, the writ petition is disposed of. No costs.