
(2001) 10 MAD CK 0036
In the Madras High Court
Case No : Writ Petition No. 20618 of 1994

K. Pranhakaran Nair

APPELLANT

Vs

The Tahsildar and Others

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Revenue Recovery Act, 1864 — Section 19, 20, 25, 4, 52

Citation : (2001) 10 MAD CK 0036

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : M.A. Sadanand, for T.K. Ramkumar, for the Appellant; S.V. Durai Solaimalai, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. Aggrieved by the order of the second respondent Collector, Nilgiris District dated 1.12.1994, the petitioner has filed the above writ petition to

quash the same and consequently direct the second respondent to forward the appeal dated 07.09.1987 filed by him to the third respondent, in

order to enable the third respondent to consider the same and pass appropriate orders in accordance with law.

2. According to the petitioner, he has been in occupation and possession of 18 acres of land in S. Nos. 48/A/23, 163/E4 and 58/2 in Cherangode

Village, Nilgiris District. The lands had been cultivated by his father for over half century on payment of ""B"" memo charges. After his death in

1962, he has been continuously cultivating these lands, after payment of ""B"" memo charges. On 31.12.1964, he was assigned 5 acres of land in S.

No. 48/A of Cherangode Village on payment of entire value. His application for assignment of the balance and in his occupation was kept in

abeyance. On 29.03.1965, he submitted a petition to the Revenue Board, requested for allotment of the balance land to him. The Revenue Board

informed him that, he may approach the second respondent for necessary orders. Thereafter, he filed a petition to the second respondent on

3.5.1966 to consider his case for assignment of the balance land to him. He also expressed his willingness to pay the land value at double the

market rate. The second respondent instead of assigning the land to him, asked him to take the land on lease for Rs. 940 plus local cess and local

cess surcharge, which totally worked out to Rs. 260 per acre, totalling in all a sum of Rs. 2,303 per annum. By deed of lease dated 26.10.1969

between the Governor of Madras and him, 11 acres and 23 cents was given on lease to him for a period of 10 years commencing from

10.12.1968.

3. During the tenure of lease, in 1976, 3 acres of land in S. No. 48/A32 covered under the lease was assigned to his daughter Tmt. K. Sudha, for

a sale consideration of Rs. 756 plus Rs. 20 towards the value of trees.

4. During the pendency of the lease and thereafter, he had persuaded with respondents 2 and 3 for assignment of the balance land. After expiry of

lease, in 1978, the first respondent issued a ""B"" memo for collection of penalty alleging encroachment of the land. When he applied for an extract

of chitta in the year 1986, he came to know that he had been granted ryotwari patta in respect of 2.08 hectares of land comprised S. No. 58/2

and Re-Survey No. 178/1 during the settlement operation in 1980/1982. While so, the first respondent by his order dated 26.9.1986, demanded

payment of an amount of Rs. 940.00 per annum from 9.10.1978 in respect of properties comprised in S. No. 58/2 and 163/E4, totalling in all an

area of 11.23 acres. Since he was all along requesting for assignment of the land in his favour, on 3.11.1986, he filed an appeal to the second

respondent against the order of the first respondent. The second respondent, by order dated 11.5.1987, without considering his appeal and

allegedly relying on G.O.Ms. No. 472 Revenue Department dated 20.3.1987, fixed the lease amount at Rs. 8,065.40 per annum. Since he was

not aware of the Government Order, he sent a letter requesting him to furnish a copy of the same. Till date, no copy of the said Government Order

has been furnished to him. Thereafter, the first respondent issued an order dated

24.8.1987, demanding a sum of Rs. 1,71,265.06 from him towards alleged lease amount for the period 1978 to 1982 together with interest, cess etc., in respect of 8.23 acres, after deducting the 3 acres assigned to his daughter.

5. Questioning the same, he filed a petition before the second respondent on 7.9.1987 stating that, without any intimation, by communication dated

01.12.1994, served by affixture in his absence, informing him that the amount is demanded as land arrears under the summary provisions of the

Revenue Recovery Act is illegal and contrary to law. The second respondent is also not entitled to initiate proceedings under the Revenue

Recovery Act (in short "R.R.Act"), in respect of the alleged lease amount, since there is no Consensus Ad Idem in respect of the said dues. At no

time, during the alleged period of lease, he was informed of the proposal for renewing the said lease or on terms of the same. The third

respondent is not entitled to order renewal of the lease without first ascertaining from him whether he was willing to pay the quantified lease

amount. The said Government Order passed by the third respondent is also null and void, since the same has been made with retrospective effect.

6. On behalf of the respondents, third respondent has filed a counter affidavit disputing various averments made by the petitioner. In G.O.2340

Revenue dated 10.12.1988, the petitioner was granted lease for an extent of 11.23 acres of Government land in S. No. 48/A/2, 58/2 and 163/E4

of Cherangode Village for a period of 10 years from 10.12.1968 on payment of annual lease amount of Rs. 940/-. After expiry of the lease, the

same was not renewed in time, his occupation was brought under Land Encroachment Act, 1905 and "B" memo fee was collected every year. The

Government in G.O. Ms. No. 472 Revenue (1) Department dated 26.03.1987, extended the lease for a period of four years from 10.12.1978 to

09.12.1982, to an extent of 8.23 acres. The market value has been fixed at Rs. 7,000 per acre and the lease amount has been fixed at Rs.

8,065.40 for 8.23 acres per year plus cess and local surcharge to be collected after deducting the "B" memo charges already collected. The total

amount to be collected is Rs. 1,71,265.06, in order to collect the amount as ordered by the District Collector, they are entitled to invoke the

provisions of the R.R. Act. The Assistant Settlement Officer has granted ryotwari

patta to the petitioner from the year 1976, to an extent of 5.30

acres in S. No. 58/2 (Re-survey No. 178/1). As the lease was not renewed and the petitioner continued to occupy the land, ""B"" memo was

booked from the year 1979. Since the Government considered that it would be better to lease out the land and ordered renewal of lease from

10.12.1972, 9.12.1982 in their order in G.O.Ms. No. 472 Revenue Department dated 20.3.1987, the Collector has fixed the lease amount and

demand raised. According to which the writ petitioner has to pay a sum of Rs. 1,71,265.06. Since the said amount is due for the past 12 years, it

has been decided to distrain the properties of the petitioner under Sections 19 and 20 of the R.R. Act to make good the arrears amount. Ample

opportunities were given to the petitioner to pay the Government dues. It is not mandatory on the part of the Government to ascertain the

willingness of the petitioner while ordering for lease, since it is only renewal of earlier lease. The lease amount as claimed for 8.23 acres of land is

reasonable and genuine. With these averments, they prayed for dismissal of the writ petition.

7. In the light of the above pleadings, I have heard Mr. M.A. Sadanand, learned counsel for the petitioner and Mr. S.V. Durai Solaimali, learned

Government Advocate for the respondents.

8. Mr. M.A. Sadanand, learned counsel appearing for the petitioner has raised the following contentions:

1. Absence of consensus ad idem regarding arrears legally due renders resort to the provisions of the R.R. Act is void;

2. Inasmuch as the amount is disputed by the petitioner, no details given, no prior notice of hearing or personal hearing afforded, the respondents

violated Section 25 of the R.R. Act; and

3. The petitioner who was initially treated as a lessee, latter on as an encroacher and mulcted with lease amount to the tune of Rs 1,71,265.06,

which is 15 times over the earlier levy, for which no reason is given is arbitrary and fanciful.

9. On the other hand, learned Government Advocate would contend that, inasmuch as the second respondent-Collector of Nilgiris after

considering the claim of the petitioner with reference to the records, passed an order rejecting his request, there is no merit in the writ petition and

prayed for dismissal of the same.

10. I have carefully considered the rival submissions.

11. It is seen from the particulars furnished that, initially the petitioner's father was in occupation of 18 acres of Government land in S. Nos.

48/A/2, 163/E4 and 58/2 in Cherangodu Village, Nilgiris District for 50 years on payment of ""B"" memo charges. His father died in 1962 and the

petitioner continuously cultivating the land in question. The assignment of 5 acres of land in S. No. 48/A was made in favour of the petitioner on

31.12.1964. On 29.3.1965, he made an application to the Revenue Board for assignment of the balance of 13 acres of land. By order dated

3.4.1966, the erstwhile Revenue Board directed the petitioner to approach the Collector for appropriate relief. Accordingly, the petitioner made

an application on 3.5.1966 to the District Collector for assignment of 13 acres, offering to pay double the market rate. It is seen from the

proceedings of the Collector dated 25.10.1969 that, instead of assignment, leased 11 acres and 23 cents of kind to the petitioner at Rs. 260 per

annum per acre. In 1976, 3 acres in S. No. 48/A32 covered by the lease was assigned to the petitioner's daughter K. Sudha for Rs. 776. In

1978, after expiry of lease, the first respondent Tahsildar, issued ""B"" memo, alleging encroachment. No doubt, the petitioner has paid ""B"" memo

charges as claimed.

12. It is further stated that, in 1984, he applied for chitta extract, which revealed that he had been granted ryotwari patta for 2.86 hectares of land

comprised in S. No. 58/2 and Re-Survey No. 178/1 during the settlement operation in 1980/1982. According to him, even thereafter, the entire

land was treated as Government land. On 26.9.1986, the first respondent demanded Rs. 940 per annum from 9.10.1978, the petitioner filed an

appeal to the Collector on 3.11.1986. The District Collector, by order dated 11.5.1987, relying on G.O. Ms. No. 472 Revenue Department

dated 20.3.1987, fixed the lease, amount at Rs. 8,065.40 per annum, per acre plus local cess and local cess surcharge, which comes to Rs.

31,858.33. For the said amount, interest was also claimed for four years.

13. It is the grievance of the petitioner that, in spite of making a specific request for furnishing a copy of G.O.Ms. No. 472 Revenue Department

dated 20.3.1987, according to him, till date the same was not furnished. It is

also not clear, how the lease was renewed unilaterally and retrospectively for a period of four years from 10.12.1978 to 9.12.1982, after having treated the petitioner as an encroacher for the same period and collected ""B"" memo charges. On the basis of the order of the second respondent, the first respondent Tahsildar, by proceedings dated 24.8.1987, made a demand for Rs. 1,71,265.06 as arrears of lease amount for 8.23 acres, after deducting the 3 acres assigned to his daughter. The petitioner made a representation on 7.9.1987, disputing the levy, which included lease in respect of 2.08 hectares, for which the petitioner had been given ryotwari patta and having treated the petitioner to pay ""B"" memo charges. It is also the grievance of the petitioner that, being a cardiac patient, after return from Coimbatore Hospital, on 8.12.1984 he ascertained that the impugned order dated 1.12.1994 was pasted to the door. Though the respondents have initiated distraint proceedings under the R.R. Act, no notice of personal hearing, no proper notice u/s 25 of the R.R. Act was followed.

14. It is clear that, the land in question was in occupation of petitioner's father till his death (1962) and thereafter, the petitioner continued and cultivating the land. On the basis of his application for assignment of 13 acres, the second respondent in his proceedings dated 26.10.1969, leased 11 acres and 23 cents to the petitioner at Rs. 260 per annum, per acre. In other words, the lease for a period of 10 years was fixed at Rs. 2,303.00 per annum. It is also not disputed that, in 1976, out of the 11 acres and 23 cents, 3 acres in S. No. 48/A32 covered by the lease was assigned to the petitioner's daughter, namely K. Sudha for Rs. 776. After expiry of the lease period, it is seen from the proceedings, the petitioner was treated as an encroacher and ""B"" memo charges were levied.

15. Though the third respondent has filed an elaborate counter affidavit running into 19 pages, there is no reference to s how how the lease amount at Rs. 8065 per annum per acre and other charges, namely local cess and local cess surcharge were fixed. I have already referred to the fact that, though the Collector in his order dated 11.5.1987 referred to G.O.Ms. No. 472 Revenue Department dated 20.03.1987, it is a specific case of the petitioner that, he was not given a copy of the said Government Order, in spite of his several requests, inasmuch as the land in question belongs

to Government, a portion was assigned to the petitioner and her daughter as requested. The remaining extent was leased out for a period of 10 years and the Government is entitled to increase the lease amount, the same should be done after notice to the petitioner and after affording an opportunity to him. In other words, while increasing the lease amount (according to the petitioner 15 times), that too with retrospectively for four years from 10.12.1978 to 9.12.1982, after having treated the petitioner as an encroacher and collected ""B"" memo charges, I am of the view that the respondents ought to have afforded adequate opportunity to the petitioner. As stated earlier, having granted assignment for certain extent, leased out the remaining land for 10 years, treating him as an encroacher, the act of the respondents in increasing the lease amount unilaterally and retrospectively cannot be sustained. On this ground, the impugned order of the second respondent is liable to be quashed.

16. After unilaterally increasing the lease amount, the second respondent has directed the first respondent to recover the said amount by invoking the provisions of R.R. Act, by attaching his properties including movables and immovables. Here again, though the Government is empowered to invoke the provisions of the R.R. Act, we are expected to follow the mandatory provisions of the Act. Before going into the provisions applicable to our case, it is to be noted that, absolutely there is no consensus ad idem to recover the arrears under the provisions of R.R. Act. In other words, the petitioner was all along disputing the amount demanded and according to him the same was determined unilaterally without notice and affording an opportunity to him.

17. Section 4 of the R.R. Act speaks about Arrear of revenue.,

4. Arrear of revenue. - When the whole or portion of a kist shall not be so paid, the amount of the kist or of its unpaid portion shall be deemed to be an arrear of revenue.

18. Section 25 of the R.R. Act speaks about, procedural aspects to be followed by the authorities.

25. Demand to be served prior to attachment of land. Mode of service. Before a Collector, or other officer empowered by the Collector in that behalf, proceeds to attach the land of the defaulter or buildings thereon, he shall cause a written demand to be served upon the defaulter, specifying

the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time allowed for payment, which shall be fixed with reference to the distance from the land on which the arrear is due to the place at which the money is to be paid. Such demand shall be served by delivering a copy to the defaulter, or to some adult male member of his family at his usual place of abode, or to his authorised agent, or by affixing a copy thereof on some conspicuous part of his last known residence, or on some conspicuous part of the land about to be attached.

19. I have already referred to the fact that the Government is empowered to recover the amount demanded as an arrears of revenue by virtue of

Section 4 of the R.R. Act. Section 25 provides elaborate procedure to be followed before attaching the land of the defaulter or buildings thereon.

Before proceeding to attach the same, the Collector or the Officer empowered by the Collector has to issue a written demand and the same has to

be served on the defaulter specifying the demand and other particulars. Further, such demand to be served by delivering a copy to the defaulter or

to some adult male member at his family at his usual place of abode or to his authorised agent or by affixing a copy thereof, on some conspicuous

part of his last known residence or on some conspicuous part of the land about to be attached.

20. With reference to the procedure to be followed and invocation of R.R. Act, Mr. M.A. Sadanand learned counsel appearing for the petitioner

has very much relied on the earliest decision of this Court in the case of P.A., Aliyar Saheb v. Independent. Dy. Thasildar, Pallipattu, 1975 (88)

LW 383. The following conclusion of Ismail, J., in that decision is relevant,

43. Therefore, in my opinion, the result of the above decisions is in a case where the amount is recoverable only as "sum due to the State

Government" falling within the scope of Section 52 of the Revenue Recovery Act and where a person from whom the said amounts is sought to be

recovered disputes either the existence of his liability or the extent, of his liability, before resort to the provisions of the Revenue Recovery Act can

be had, there must be an enquiry by the State in which the alleged defaulter is entitled to participate and wherein the basis of the liability as well as

the amount claimed by the State must be made known to the alleged defaulter

who is given an opportunity to place all the materials and circumstances which, in his opinion, go to exclude or eliminate his liability itself or to reduce the liability, and a determination based on such enquiry should be arrived at with reference to the existence or the extent of the liability of the defaulter.

21. It is clear from the provisions referred to above that, if a person disputes the amount sought to be recovered, there must be an enquiry by the

Officer concerned, the aggrieved person must be given an opportunity to put forth his defence/objections and after considering all the same, it is

incumbent on the concerned authority to determine the amount. In our case, particulars furnished show that the respondents have not followed the

said recourse and on this ground also the impugned order is liable to be quashed.

22. In the light of what is stated above, the impugned order of the second respondent - Collector, Nilgiris dated 1.12.1994 is quashed and the writ

petition is allowed to this extent. No costs. However the respondents are permitted to proceed afresh, after issuing notice to the petitioner,

affording adequate opportunity and thereafter determine the amount payable by the petitioner. After determining the amount as stated above, if the

petitioner fails to pay the same, it would be open to the respondents to recover the same by resorting to the provisions of R.R.Act. Undoubtedly,

the respondents are bound to follow the procedure as contemplated in those provisions. It is also made clear that, in the proposed enquiry it would

be open to the petitioner to raise all permissible objections / contentions.