(1972) 01 MAD CK 0015

In the Madras High Court

K. V. Krishna Iyer — APPELLANT

Vs

The President, Panchayat Board and Others — RESPONDENT

Date of Decision : 05-01-1972

Acts Referred:
Limitation Act, 1963 — Section 5

Citation : (1974) 1 MLJ 218

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—The Assistant Settlement Officer, Salem, on 30th June, 1967 passed an order allowing a ryotwari patta to the petitioner

herein in respect of S. No. 64/4 pro-measuring 0.69 acre in Meyyanur village in Salem taluk and district. Against this order, the first respondent

herein preferred a revision petition to the Settlement Officer, party No. III, Madras-7, on 16th September, 1967. The Settlement Officer found,

after deducting the time taken for obtaining the certified copy of the order of the Assistant Settlement Officer, that the revision petition was filed

after 43 days from the date of the order of the Assistant Settlement Officer. Since the prescribed period of limitation was only 30 days and. the

revision petition was filed after a delay of 13 days, he stated that the delay had not been properly explained and, therefore, by an order dated 10th

October, 1967 rejected the revision petition in litnine. Against this order, the first respondent herein preferred a revision petition to the Director of

Settlements, Madras-5. The Director of Settlements by an order dated 5th March, 1968, purporting to act u/s 5 (2) of the Madras Estates

(Abolition and Conversion into Ryotwari) Act, 1948, (Madras Act XXVI of 1948) hereinafter referred to as the Act condoned the. delay, set aside the order of the Settlement Officer, Salem and remanded the case to him for fresh disposal on merits. The petitioner herein preferred a

revision petition to the Board of Revenue against this order of the Director of Settlements and the Board by its order dated 3rd May, 1968

dismissed the revision petition. It is, thereafter, the petitioner has filed the present writ petition praying for the issue of a writ of certiorari to quash

the order of the Director of Settlements, as confirmed by the Board of Revenue.

2. The point that is raised in this writ petition lies in a very narrow compass. Pursuant to Section 67 (2) (d) of the Act, the Government in G.O.

No. 3190, Revenue, dated 17th October, 1955 made the following rule:

Revision petitions against the orders of an Assistant Settlement Officer u/s 11 of the said Act shall be presented to the Settlement Officer

concerned within fifteen days from the date of conduct of rough patta objection hearing or the date of publication of this notification, whichever is

later, in the areas where section n enquiries have already been conducted separately under the old procedure and within thirty days of the conduct

of final settlement enquiry or within fifteen days of the date of publication of this notification, whichever is later, in areas where Section 11 enquiries

are conducted along with the rough patta objection hearing under the new procedure. Further revision petition shall lie to the Director of

Settlements and the Board of Revenue against the orders of the Settlement Officer and the Director of Settlements respectively within thirty days of

the date of their respective orders.

Explanation.--Section 5 of Indian Limitation Act, 1908 (Central Act IX of 1908) shall not apply to revision petitions coming within the purview of

this rule.

Thus it will be seen that for preferring a revision petition to the Settlement Officer the period of limitation prescribed is only 30 days and this rule

expressly states that Section 5 of the Indian Limitation Act shall not apply to revision petitions coming within the purview of this rule. That means,

once a revision petition is filed beyond the period of limitation prescribed in the rule, the Settlement Officer will have no jurisdiction whatever to

entertain the same, and to deal with the same on merits. It is only because of this provision the Settlement Officer dismissed the revision petition of

the first respondent in limine. However, the Director of Settlements when he interfered with the order of the Settlement Officer stated that he was

competent to condone the delay by virtue of Section 5(2) of the Act. I am of the opinion that the Director of Settlements committed a patent error

of law in coming to this conclusion. Section 5(2) of the Act merely states:

Every Settlement Officer shall be subordinate to the Director and shall be guided by such lawful instructions as he may issue from time to time ; and

the Director shall also have power to cancel or revise any of the orders, acts or proceedings of the Settlement Officer, other than those in respect

of which an appeal lies to the Tribunal.

In my opinion, this section itself does not give power to the Director of Settlements while revising the order of the Settlement Officer, to do what

the Settlement Officer himself cannot do. Whenever an appellate authority, or a revisional authority interferes with an order of the lower authority

and passes an order, that authority passes the order which in its opinion the lower authority ought to have passed in accordance with law. If the

lower authority had no power to condone the delay the appellate authority cannot condone that delay occurring before the lower authority and on

that ground set aside the order of the lower authority. That is exactly what the Director of Settlements has done in the present case. No doubt, by

G.O. No 159, Revenue, dated 9th January, 1963, the Government in exercise of the powers conferred by clause (6) of Sub-section (2) of Section

67 read with Sub-section (2) of Section 5 and clauses (c) and (d) of section 7 of the Act made the following rule:

1 (1) Any person who objects to any of the orders, acts or proceedings of a Settlement Officer, other than those in respect of which an appeal lies

to the Tribunal, may prefer a revision petition to the Director.

(2) Any such petition shall be preferred within one month from the date on which these rules are published in the Fort St. George Gazette or within

two months from the date of communication of the order or proceeding of the Settlement Officer, whichever of the dates aforesaid is the latest:

Provided that the Director may admit a petition preferred after the period aforesaid if he is satisfied that the petitioner had sufficient cause for not

preferring the petition within the said period.

But the proviso to Sub-rule (2) merely enables the Director to admit the petition preferred after the period of limitation prescribed for preferring such a revision petition to him and certainly this proviso does not enable the Director to condone the delay occurring in the revision petition

preferred to the Settlement Officer, who himself had no power to condone the delay. As a matter of fact, it is his confusion that has been

responsible for the orders passed by the Director and the Board in this particular case. It is conceded that the Settlement Officer by virtue of the

Explanation to the rule extracted already had no power to condone the delay. If he had no power to condone the delay, neither the Director of

Settlements, nor the Board of Revenue had any power to condone that delay and on that basis set aside the order of the Settlement Officer and to

remand the matter to the Settlement Officer. I may point out again that the power to condone the delay available to the Director of Settlements, is a

power to condone the delay in preferring a revision petition to him beyond the period of limitation prescribed therefore and not a power to

condone the delay in preferring a revision petition to the Settlement Officer, which the Settlement Officer himself had no power to condone.

3. Looked at from another point of view., also the orders of the Director of Settlements and the Board of Revenue are erroneous in law. As I

pointed out earlier, both the Director of Settlements and the Board of Revenue relied on Section 5(2) of the Act and obviously on the rule made by

the Government in G.O. No. 139, Revenue dated 9th January, 1963. I am of the opinion that the said Section 5(2) and the rule referred to have

no application to the revision petition preferred by the first respondent to the Director of Settlements. The rule made by the Government in G.O.

No. 3190, Revenue dated 17th October, 1955 itself provides for revision petitions to the Director of Settlements and the Board of Revenue and

also prescribes the period of limitation therefore, in respect of orders made u/s 11 of the Act, Hence, Section 5(2) is a general provision, while the

rule made by the Government in G.O. No. 3190, Revenue, dated 17th October, 1955 is a special provision dealing with the orders made u/s 11

of the Act. On the general principle that a special provision excludes the applicability of the general provision, with regard to the orders made u/s

11 of the Act, it is the rule mentioned above that is exclusively applicable. Therefore, the Explanation to the rule excluding the application of

Section 5 of the Limitation Act, will govern even the revision petitions preferred to the Director of Settlements and the Board of Revenue, against the orders of the Settlement Officer in revision preferred against the order of the Assistant Settlement Officer made u/s 11 of the Act.

Consequently, even the Director of Settlements had no power to condone the delay in preferring the revision petition to him falling under the rule

made in G.O. No. 3190, Revenue, dated 17th October, 1955.

4. Under these circumstances, the writ petition is, allowed and the impugned orders of the Director of Settlements and the Board of Revenue are

quashed. There will be no order as to costs.

