
(2000) 03 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 4276 of 1993 and W.M.P. No's. 6899 and 6900 of 1993

K.G. Krishnaswamy and 3 others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 30-03-2000

Acts Referred:

Citation : (2000) 03 MAD CK 0007

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : G. Rajagopalan, for the Appellant; A. Arumugam, G.A., for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The petitioners have filed this writ petition praying to issue a writ of Certiorarified mandamus to call for the records of the

second respondent dated 11.8.1992 made in O.Mu.5621/92 and to quash the same and direct the respondents to issue patta to the petitioners

herein under the Tamil Nadu Leaseholds Abolition and Conversion into Ryotwari Act, 1963 in respect of the petitioners" land bearing S. No. 166

of Pallavaram in an extent of 1.54 acres. In the affidavit filed in support of the writ petition, the petitioners would submit that they jointly purchased

the rights of the lands in R.S. No. 166 measuring 1.54 acres which had been originally leased out by the Government of India in favour of one Haji

C. Hussain Saheb under a lease deed dated 18.12.1915 registered as document No. 222/1916 at the Office of the Registrar, Chengalpet; that the

said lease hold land was subsequently taken over by the firm of M/s. Khizar Mohammed & Company and the said firm was in enjoyment of the

land and the superstructures thereon uninterruptedly; that later one Maimooma Ammal of Adirampattinam wrote to the Cantonment Board on

3.2.1957 as to whether there would be any objection since she intends to purchase the property and if so, to state the same in thirty days and since

there was no objection forthcoming from the Cantonment, by a deed dated 2.4.1957, she purchased the rights in the said land, registered as

document in the Office of the Registrar, Chengalpet in the year 1960 and she applied for the renewal of the lease by application dated 30.12.1959

since the lease period of fifty years came to a close.

2. The further submissions of the petitioners are that in spite of the said Maimooma Ammal writing to the authorities concerned for the renewal of

the lease for a further period of fifty years from 8.12.1961 in her favour, no reply was forthcoming; that she sent a reminder dated 28.12.1961;

that a letter dated 5.3.1963 was received from the District Revenue Officer to ascertain whether she was willing to convert the leasehold rights into

a freehold land by paying ten times the standard rent; that the said Maimooma Ammal by letter dated 29.3.1963 stated that she was prepared to

accept the Board's proposal and since there was no reply from the Government as such, she continued to enjoy the land in her own absolute right.

3. The further case of the petitioners is that on 16.1.1989, the said Maimooma Ammal once again wrote to the Commissioner of Land

Administration regarding the renewal of the leasehold rights and conversion of leasehold right to freehold right. Thereafter, she transferred the rights

in favour of the petitioners herein by sale deed dated 16.2.1992, registering as document No. 541/92 on the file of the Registrar of South Madras;

that since the Revenue records were also prepared pursuant to the sale deed, the petitioners are in absolute possession of the suit property; that

they applied for issue of patta to the second respondent under Act 27/1963 viz., Tamil Nadu Leaseholds (Abolition and Conversion into

Ryotwari) Act 1963; that the second respondent in respect of their application dated 3.8.1992, passed an order rejecting the same without an

opportunity for the petitioners to be heard and bereft of any detail, and hence the petitioners have come forward to file the above writ petition on

certain grounds as brought forth in the grounds of writ petition.

4. Today, when the above matter has been taken up for consideration, the

Learned Counsel for the petitioners besides laying emphasis on what had been pleaded in the writ petition, would further submit that absolutely without consideration of the legal rights of the petitioners which accrued not only from the registered deed dated 2.4.1957, but also the subsequent developments and the fact that the petitioners for decades continued to be in physical possession of the property after the statutory lapse, the said property came to be shown as resumed by the first respondent by its order passed in G.O.Ms. No. 557 Revenue dated 7.9.1994 and the said Government Order had not been passed to the facts and the position of law and have rejected the plea of the petitioners as per the impugned order. The Learned Counsel would add to his argument that such orders have been passed not only without consideration of the factual and legal position but also without an opportunity for the petitioners to be heard on the specific representation made by the petitioners dated 3.8.1992 and the impugned order rejecting the application of the petitioners is a one sentence, non-speaking order and hence it has to be quashed.

5. In reply, the learned Government Advocate (writ) would submit that the original lease was started in the year 1861 wherein on 9.2.1861, the land in question was leased out in favour of Mrs. Louisa Tore for a period of fifty years and on expiry of the 50th year of lease, on 8.2.1911, the said land had been leased out in favour of one Hussain Saheb upto 7.2.1961; that thereafter, the lease was not extended in favour of anyone by the Government during which period, the petitioners are said to have purchased the said property from some third parties who were unauthorised and not having any right over the said property to create such sale deed since they themselves were not having any right and the Government, as the owner of the property, ultimately resumed the said land as per the orders passed in G.O.Ms. No. 557 Revenue dated 7.9.1994 when there was no one in physical occupation of the lands and hence, the learned Government Advocate would submit that it is a valuable land belonging to the Government and the petitioners' case is false and untenable and would further argue that when the petitioners' vendor herself did not enjoy a clear title, she could not convey better title to the petitioners and hence would pray for dismissing the petition with costs.

6. Assessing the facts and circumstances as pleaded in the writ petition and

having regard to the materials placed on record and upon hearing the Learned Counsel for both, what comes to be known is that it is the land measuring 1.54 acres falling in R.S. No. 166 of Pallavaram, Saidapet Taluk, Chengalpet District, the history of which is traced by the petitioners, right from the year 1861 when it is said to have been leased out in favour of one Mrs. Louisa Tore for a period of fifty years and on expiry of the said term of lease, again it had been leased for another fifty years in favour of one Hussain Saheb and that period also came to a close on 7.2.1961 and, thereafter, the lease was not extended regarding which there was no controversy between parties.

7. But what is contended on the part of the petitioners is that the said land was subsequently taken over by a firm M/s. Khizar Mohammed & Company and the said firm was in enjoyment of the land and the superstructures thereon uninterruptedly and later, one Maimooma Ammal of Adirampattinam having written to the Cantonment Board on 3.2.1957 to ascertain whether there would be any objection since she intended to purchase the property the same may be informed in thirty days issuing a clear cut statutory notice. Since, no objection was raised on the part of the Cantonment, she purchased the rights in the disputed land by a registered deed dated 2.4.1957 and when she sought for the renewal of the lease by an application dated 30.12.1959 thereby seeking for a further lease for a period of fifty years from 8.12.1961 since no reply came forth, sending a reminder dated 28.12.1961 and even thereafter without any reply, ultimately she received from the District Revenue Officer a letter dated 5.3.1963 seeking to ascertain whether she was willing to convert the leasehold right into a freehold land by paying ten times the standard rent and in spite of having accepted the Board's proposal by her letter dated 29.3.1963, there had been no reply from the Government and she continued to enjoy the land in her absolute right; that thereafter she transferred the rights in favour of the petitioners by sale deed, dated 16.2.1992 by registering as document No. 541/92 by the Registrar of South Madras and thereafter, all the Revenue records pertaining to the land came to be entered in the name of the petitioners and ultimately when the petitioners sought for the issue of patta from the second respondent under Act 27/1963 viz., Tamil Nadu Lease holds (Abolition and Conversion into Ryotwari)

Act, 1963, the second respondent by the impugned order

rejected this request of the petitioners resulting in the petitioners seeking remedy before this Court.,

8. On the part of the respondents, regarding the lease for the said land in the year 1861 and 1911 each for a period of fifty years in favour of third

parties would be admitted and thereafter, it is only the G.O.Ms. No. 557 Revenue dated 7.9.1994 by and under which the Government passed

orders resuming the said land would be highlighted "since there was no one in physical possession of the land and hence it would be pleaded on the

part of the Government that the petitioners have no tenable rights on ground that the petitioners" vendor herself did not enjoy the clear cut title and

hence the petitioners cannot under any circumstance be construed as having any right over the said land at all.

9. It is the firm case of the petitioners that they have a definite right rather absolute right over the disputed property under Act 27/1963 that is Tamil

Nadu Leaseholds (Abolition and Conversion into Ryotwari) Act, 1963 and it is only a formal enquiry that is to be held on the application of the

petitioners dated 3.8.1992 and the impugned order came to be" passed by the second respondent in his O.Mu. No. 5621 of 1992 dated

11.8.1992 thereby rejecting the claim of the petitioners for patta under the said Act.

10. A cursory glance into the impugned order would reveal that none of the issues involved in the dispute has either been taken up for

consideration or actually considered and the conclusions arrived at. On the contrary, a blunt, non-speaking order, absolutely bereft of any

consideration has been passed by the second respondent. It is not the manner in which the second respondent is expected to deal with such a

serious matter concerned with the valuable property measuring 1.54 acres regarding which substantial rights are claimed on the part of the

petitioners based on strong reasons alleged and the grievance of the petitioners that in view of their rights borne by the document and long

possession and enjoyment of not only the land but also the superstructures thereon, their application seeking patta should have been validly

considered holding a full-fledged enquiry and with due opportunity for the petitioners to be heard. The second respondent is under a legal

obligation to hold such an enquiry whenever patta is sought to be issued based on certain rights alleged and documents submitted and in

consideration of the rights of parties in the facts and circumstances of the case and applying the legal norms and procedures, the second

respondent is expected to arrive at a final conclusion in determining the rights of parties in passing a speaking order. But the second respondent

took no effort to reject the petitioners' request to decide the matter in accordance with law which is not only unfair and unreasonable, but also

arbitrary on the part of the second respondent. In all probabilities, the second respondent should have held a thorough enquiry into the allegations

of the application of the petitioners and since no enquiry had been held and the impugned order had come to be passed by the second respondent

without consideration of any valid issue or point, the impugned order is bad in law and becomes liable to be quashed.

In result,

(i) the above writ petition succeeds and the same is allowed. No costs;

(ii) the impugned order passed by the second respondent in O.Mu. 5621 of 1992 dated 11.8.1992 is hereby quashed.

(iii) the second respondent is directed to hold a full-fledged enquiry into the facts and circumstances encircling the whole affair connecting to the

rights of the petitioners pertaining to the land in S. No. 166 of Pallavaram extending 1.54 acres relating to the claim of the petitioners for the issue

of patta under the Tamil Nadu Leaseholds Abolition and Conversion into Ryotwari, Act, 1963 (Act 27/1963);

(iv) during enquiry, the second respondent should give due opportunity to all the petitioners to be heard on the petition already submitted by the

petitioners on which the impugned order came to be passed if it is available, lest on a similar memo of application that would be presented by the

petitioners, within thirty days from the date of receipt of a copy of this order by them, before the second respondent and in consideration of the

facts and circumstances and the position of law, the second respondent shall pass a speaking order on merits and in accordance with law; and;

(v) in view of the long pending nature of the subject, further direction is issued to the second respondent to complete the whole procedure within

six months from the date of receipt of a copy of this order.

Consequently, WMP. Nos. 6899 and 6900 of 1993 are closed.