
(1972) 12 MAD CK 0036

In the Madras High Court

Case No : Writ Petition No's. 697, 874 and 875 of 1972

K.R. Appasamy Naidu

APPELLANT

Vs

Board of Revenue

RESPONDENT

Date of Decision : 05-12-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1972) 12 MAD CK 0036

Hon'ble Judges : Ramprasada Rao, J

Bench : Single Bench

Advocate : R.G. Rajan and V. Radhakrishnan, for the Appellant; T. Sathia Dev, Asst. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramprasada Rao, J.—These three writ petitions are connected and it is sufficient if the facts in one of them viz., W.P. No. 697 of 1972 are briefly stated. The estate in question was taken over under the Madras Estates (Abolition and Conversion into Ryotwari) Act 1948 (Act 26 of 1948), and thereafter, it vested in the State in accordance with the provisions of that Act. All the three estates concerned in these writ petitions are inam estates. The question therefore arose thereafter as to what compensation the inamdar was entitled to under the provisions of the Act. The petitioner had to come up to this Court from time to time to establish not only his right but also the nature of his right which reflected upon the quantum of compensation which he would be entitled to after the taking over of the estate. In the instant case, there was a doubt whether the petitioner would be entitled to compensation under the head of miscellaneous revenue by the sale of babul and other trees in tank bed bund, poramboke etc., lands in quondam inam. The Director of Survey and Settlements rejected the claim of the petitioner and the Board of Revenue also concurred with him. But, in Writ Petition No. 1149 of 1964 filed challenging the Board's order, this Court directed the authorities to include those trees under the head of miscellaneous

revenue for purpose of computing and reckoning the compensation payable to the inamdar and this directed the Board and other ancillary authorities to go into that question. Thereafter, in November 1967, the District Forest Officer, together with the Settlement authorities inspected the estate in question, enumerated the trees thereon and submitted the respective reports. On the basis of such reports a slight increase was made in the totality of compensation payable to the petitioner. Whilst he could only obtain a sum of Rs. 57,085-25 as per the original decision of the Board, not taking into consideration the trees etc., as per the directions issued by this Court, he was offered a compensation of Rs. 75,000/- as a result of the revised estimate which was based on the reports of the officers referred to above. But, as there was a mistake even in the reports of the authorities which were the ultimate basis for the reckoning of the compensation paid as above, and as the authorities took into account only the existing babul trees and ignored all other trees which also came within the compass of computation, the petitioner had to appeal to the Board as provided for under the Act. Amongst various other contentions, he urged that all varieties of trees should have been taken into account and evaluated; the estimate of the trees available during the relevant period should also have been taken into consideration and the value of Rs. 38/- per ton as per the report of the District Forest Officer should have been accepted the Board heard all the interested and affected parties and allowed the appeal by its order dt. 3rd October 1970. In and by this order the petitioner secured some more compensation, as not only the wooden contents of the trees were evaluated afresh but also because of the addition of one more category of trees into the pool for purposes of evaluation. The petitioner was not satisfied even with the method adopted by the Board which resulted in its order dt. 3rd October 1970. Therefore, he filed writ petition No. 777/1971 claiming that all kinds of trees in the quondam inam estate with which that particular writ petition was concerned should be brought into the pool and estimated before finally compensation could be fixed. In the meantime, it appears that this Court pronounced its judgment in K.R. Appaswamy Naidu versus Board of Revenue represented by the Commissioner of Settlement of Estates and another W.P. Nos. 3066 and 3067 of 1969 in regard to other similar estates. Palaniswamy, J. by his order, d. 20th November 1970 directed that all varieties of trees should be included for purposes of arriving at the true has is compensation to be paid and that the number of trees available during the relevant period should be estimated and included. He also made it clear that the petitioner as the erstwhile land-owner would be entitled to claim credit for the average net annual miscellaneous revenue that could be derived during the relevant faslis. In view of this decision of this Court in W.P. 3066 and 3067 of 1969, the State Government filed a counter in W.P. 777 of 1971 undertaking to implement the formula incorporated in the decision of this Court in and also the various directions given by this Court in the above two writ petitions. In this view, W.P. 777/1971 was withdrawn by the petitioner. On the basis of the above directions and the explicit formula indicated by this Court in W.P. Nos. 3066 and 3067 of 1969 the Board of Revenue once again went into the matter in detail and

passed an order on 15th September 1971. To that order, the Board annexed as appendix a working Sheet which is to the following effect:?

Ilayarasanendal:?

Effective area : 32-60 acres.

Cutting 1938?16 years : Ton per acre Babul.

40/30 16 - 21 - 1/3.

Total tonnage

695-00

Other including poramboku

90-00

786-50

Pulingulam effective area:

35-40 acres.

cutting in 1944

11 years.

ton per acre:

$40/30 \times 11 = 14-23$

Total Babul

529-40

Others

729-00

1258-40

Devarkulam:-

Effective area:

97-48 acres.

Tonnage

21-1/3-

16years.

Total Babul

2079-50

Others

327-00

2406-50

Finally, when disposing of the matter the Board observed as follows:

The Director of Settlements, Madras will take further action to compute the basic annual sum and total compensation for the estates in question and submit proposals to the Board under S.39(6) of the Act in accordance with the schedule attached to this order.

The schedule referred to is the working sheet appended to the order.

2. The Director of Settlements, it is expected, should have followed the letter and the spirit of the above order of the Board of Revenue and from the records it is seen that he has submitted a report as called for. But, in his report, he has made some unwanted suggestions with which this court is not concerned. After the Director of Settlements thus computed the basic annual sum in accordance with the guidelines set out by this court in the writ petitions as above, the matter came up again to the Board of Revenue apparently for a formal pronouncement of decision. But, surprisingly enough, under the challenged order the Board purporting to act under S. 39(6) of the Act and referring, however, to the ratio in W.P. 3066 and 3067 of 1969 set at naught the entirety of the clinching guidelines given by this court and the Board of Revenue itself. On the other hand, the Board of Revenue assumed for itself for the second time a jurisdiction to reckon the basic compensation on the basis of the guidelines set by itself and on considerations which I shall presently demonstrate to be hypothetical. After having assumed such jurisdiction and having probably made up its mind to award compensation to the petitioner in the light of the observations made by the Board for a second time in the challenged order, a notice which the parties here to call a show cause notice was issued to the petitioner asking him to state his objection to the proposed basic annual sum and total compensation as per the calculations newly invented by the Board for the second time and the petitioner was asked whether he desired an oral hearing. It is this notice which is the subject-matter of this writ of prohibition. Though formally it is a show cause memo, it is in substance and in effect an order of the Board of Revenue passed by and in the purported exercise of the power under S.39(6) of the Act.

3. The only question which arises for consideration in the instant case is whether the Board of Revenue in the instant case and having regard to the antecedent history of the Sow of litigation connected with these estates could assume jurisdiction under S.39(6) of the Act once again submit the petitioner to a further enquiry for purposes of passing a further order. As in essence, the march of law has been traced and its full effect has been fully covered by the decision of my learned brother Palaniswamy, J. in W.P. Nos. 3066 and 3067 of 1969. I am not referring to the statutory provisions which are relevant in this case seriatim but a

reference to S.39 which provides for determination of the basic annual sum and total compensation would be necessary. Under S.39 (5) any aggrieved person aggrieved by an order made by the Director who is the ultimate authority to determine the basic annual sum as also the total compensation payable either under S.39 (1) or Sub-S.(4-a) may prefer an appeal to the Board of Revenue within the prescribed time. It is in exercise of such an appellate jurisdiction that the Board passed the order, d. 15th September 1971. I may add that when the Board passed the order, d. 15th September 1971, it took into consideration all the facts and material which were necessary for the purpose of laying down the formula or guideline for the ultimate computation and reckoning of the basic annual sum and the total compensation payable. That this is clear is seen from the working sheet attached to the order of the Board. It cannot be expected of such a high executive authority like the Board to append a working sheet to its order without applying its mind to mathematical figures disclosed in working sheet. The reasonable presumption which this Court, exercising jurisdiction under Art. 226 of the Constitution, can draw, and which in the circumstances of this case, is the only reasonable conclusion is that the Board of Revenue scrutinised all the material relevant for the purposes, the historical background of the estates, the age of the trees in the locality, the nature of the trees which should be brought into the pool for the purpose of computation, the value of such trees according to their age, quality, etc., when the working sheet was drawn up. If this is the reasonable conclusion one has to arrive at, then it follows that the order, d. 15th September 1971 is the final appellate order passed by the Board in exercise of its jurisdiction under S.39 (5) of the Act.

4. A word about the working sheet is necessary. This working sheet is demonstrably significant in the sense that the Board accepted the age of the trees which were to be evaluated in the various estates. Whilst they would say that the babul trees in Ilayarasanedal were sixteen years they would make a distinction of the age of such trees in Puliangulam as eleven years. The age of sixteen years was, however, adopted for the trees in Devarkulam. Therefore, there has been a detailed study by the Board of Revenue when it prepared the working sheet and fully applied its mind even as to the age of such trees while coming to a decision on the question, particularly on the formula to be set out for the purpose of computation. The records disclose that the Board has spent a considerable time in discovering the formula $40/30 \times$ the age of the trees on the relevant date.

5. So far as the relevant dates are concerned, I have referred to the observations of Palaniswamy, J., who held that the petitioner would be entitled to claim credit for the average net annual miscellaneous revenue that could be derived normally during the next three succeeding faslis. This is provided for S.34 of the Act. In accordance with that Section, the relevant period would be between 1st July 1952 and 30th June 1955. This covers the three faslis. Therefore, the average of these three faslis ought to be taken into consideration. The working sheet however does not expressly set down the method of final evaluation of the

compensation as well as the value. But, mathematically, the working sheet has given only a hypothesis for arriving at the answer. If all the three items given in the working sheet, which refer to the total tonnage of the wood in the trees which were in existence during the relevant period are added up and it is divided by three, then the average wooden content of the trees which were in existence during the relevant faslis can be arrived at. This has to be multiplied by 37 which was the value fixed by the District Forest Officer in conjunction with the Settlement Officers and which value was accepted by this court in the writ petitions referred to above and followed by the Board in its order, 15th September 1971.

6. When these are the relevant facts, I fail to see how the Board could exercise once over jurisdiction under S.39(6) of the Act to forward the impugned notice which contained practically a revised order of the Board and called upon the petitioner to answer and file his objections. S.39(6) provides for a different situation altogether with which we are not concerned in the instant case. It reads as follows:

The Board of Revenue may also in its discretion at any time other suo-motu or on the application of any person call for and examine the record of any order passed or proceeding taken by the Director under this Section for the purpose of satisfying itself as to the legality regularity or propriety of such order or proceeding and pass such order in reference thereto as it thinks fit.

Provided that the basic annual sum or the total compensation payable in respect of any estate shall not be altered by the Board, without giving every landholder concerned and every person who has made an application under sub-S.(2) a reasonable opportunity of being heard.

The Board of Revenue either on its own or on the application of any person can scrutinise whether the Director acting under S.39 as the original authority to determine the basic annual sum and total compensation has acted legally, regularly or properly. This is the content of the jurisdiction referred to in S. 39(6). Of course it may be exercised by the Board suo-motu or on invitation. But, this sub-S. does not provide for the scrutiny of the order of the Board itself passed earlier against the order passed by the competent authority. The legality, regularity or propriety of the order of the Board of Revenue passed in its appellate jurisdiction under S.39 (5) cannot come within the scope of S.39(6) for being scrutinised by the very Board which passed the quondam order and to find out ultimately whether the erstwhile order was legal, regular or proper. It is this which has been attempted in the instant case through the challenged notice. I am satisfied that the respondent (Board of Revenue) has no jurisdiction to do so. As a writ of prohibition is issued even at the threshold to prevent statutory authorities not only from exceeding their jurisdiction but also from illegally exercising it and as the circumstances in this case warrant the rules being made absolutely, the writ petitions are allowed. There will be no order as to costs.