

(2009) 12 MAD CK 0245
In the Madras High Court
Case No : S.T.A. No. 2 of 1996

L. Ameer and Others

APPELLANT

Vs

The Assistant Settlement Officer and V.A.K. Engineering
Company (P) Ltd.

RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(2)

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 11(3), 13, 13(1), 13(2), 14(1)

Citation : (2009) 12 MAD CK 0245

Hon'ble Judges : Prabha Sridevan, J;M. Sathyanarayanan, J

Bench : Division Bench

Advocate : G. Rajagopalan for P. Thiagarajan, for the Appellant; V.T. Gopalan for Abdu Kumar Rajarathnam, for Respondent-1, for the Respondent

Judgement

Prabha Sridevan, J.—This appeal has been filed against an order of the Inam Tribunal dated 22.11.1995. The property, subject matter of the dispute, is:

Land in Old Paimash Nos. 717, 718, 721 and 722 correlated to R.S. No. 20/1 Part, present T.S. No. 122, Ward-E, Block-I of Alandur Municipality, Adambakkam Village, measuring an extent of 14505 sq.mts. or thereabout, bounded on the North by land in Paimash No. 859, correlated to T.S. No. 105, belonging to the company, South by Railway line of Southern Railway, West by Water Channel, East by Tiruvotteeswarar Manickam land situated within the Registration District of South Madras and the Registration Sub District of Alandur.

2. On 15.7.1991, the Assistant Settlement Officer at Tiruvannamalai passed an order in S.R. Nos. 130 and 131 of 1988 granting patta u/s 13(1) of the Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Act 30 of 1963), hereinafter referred to as "the Act", to the respondent-Company with respect to T.S. No. 122 for an extent of 1.45.05 sq.mts. and T.S. No. 105 for an extent of 1.0750.50 sq.mts. In the proceedings, the Inamdar, who was the Aadheena

Kartha, Kundrakudi Adheenam Tiruvannamalai Mutt and the claimants, viz. the respondents and the appellants herein, took part. Earlier, in the proceedings which commenced on 31.7.1988 in respect of other lands including the property, subject matter of these appeals, the then Assistant Settlement Officer had, after conducting an enquiry, held over the matter since the appellants herein had requested that certain records had been filed in the civil proceedings. Thereafter, the Assistant Settlement Officer heard the parties and granted patta. Against that, an appeal was filed to the Settlement Officer, Thanjavur. By order dated 31.12.1991, the Settlement Officer held that the existence of building over the land owned by either party should be proved and it must also be shown that they were in existence on or before the notified date, in order to attract the provisions of Section 13(1) of the Act and since in this case, that was not proved beyond doubt, the Settlement Officer set aside the order of the Assistant Settlement Officer and remanded the matter for fresh enquiry and disposal. Against that, the respondents herein filed a revision before the Commissioner of Land Administration, who, upon hearing the submissions made by the parties as well as the documents produced, found that the order of remand did not suffer from any infirmity. The Settlement Officer found that the order of the Assistant Settlement Officer granting ground rent patta to the respondents herein insofar as T.S. No. 105 was concerned was correct and the remand was restricted to T.S. No. 122 which measures 1.4505 sq.mts. bearing R.S. No. 20/1 correlating to Paimash Nos. 717, 718, 721/3 and 722/2. We are concerned only with this property. It is this order that was confirmed by the Commissioner of Land Administration. After remand, the Assistant Settlement Officer, by order dated 9.9.1993, conducted the enquiry with relation to T.S. No. 122 and held that the appellants were entitled to ryotwari patta u/s 80(1) for T.S. No. 122. Against this, an appeal was filed u/s 11(3) before the Inam Tribunal. The order passed therein is challenged in this appeal. The Tribunal held that the respondents were entitled to ryotwari patta and allowed the appeal.

3. Miscellaneous Petition Nos. 1 and 19 of 2009 were filed by the parties for reception of additional evidence.

4. Learned senior counsel appearing for the appellants submitted that the order of the Inam Tribunal suffers from various infirmities. There was no justification to hold that the Roka pattas and Muchalikkas could be created at any point of time, for they are not registered documents. Learned senior counsel submitted that the law requires the issuance of Roka pattas and Muchalikkas and failure by the land holder gives the occupant a right to issue, and referred to the Madras Estates Land Act, 1908. The learned senior counsel submitted that the conclusions of the Tribunal were based only on surmises, as for instance the assumption that Pattammal and her husband would not have purchased the property if the Kudivaram right was with the Adheenam. The learned senior counsel submitted that when admittedly the Melvaram right was with Adheenam, the respondents ought to trace any right they had from the Adheenam. Failure to do so would mean that they do not have any right in the property. Whereas, the appellants

have produced the pattas signed by the Izaradar of the Adheenam. The learned senior counsel submitted that the respondents do not know whether they claim right u/s 8 or u/s 13. The scopes of the two sections are totally different and this lack of clarity with regard to their own right was not taken note of by the Tribunal which erroneously directed the grant of ryotwari patta to the respondent. The learned senior counsel submitted that the applicant for reception to admission of documents filed by the respondents ought not to be received since it was only a charge sheet and it did not prove anything and a perusal of that would show that it was a verbatim reproduction of the complaint. The learned senior counsel also submitted that the Tribunal based its rejection of the appellants' claim by fixing the age of Bhuvanammal as ten years at the time of grant of patta. A stray document was referred to for arriving at the conclusion. The learned senior counsel submitted that it is true that the appellants had produced a Transfer Certificate to prove Bhuvanammal's age and a Division Bench of this Court, on 16.10.2000, had refused to believe the document. According to the learned senior counsel, the conclusion of the Division Bench can only be a prima facie one. In any event, the dismissal of the S.T.A. on the ground that the document produced was fraudulent was challenged by the appellants herein and the Supreme Court remitted the matter for disposal of the appeal on merits ignoring the alleged false document and that is how this matter is now before this Court. The learned senior counsel submitted that if opportunity is given, the appellants could prove that Bhuvanammal was not just ten years old and he referred to the plaint filed by the respondents in O.S. No. 241 of 1984 where six children of Bhuvanammal have been impleaded on her death and he referred to their ages and submitted that it would be easy to demonstrate that on the date when the Roka patta and Muchalika was given, Bhuvanammal was more than ten years old. Learned senior counsel further submitted that the investigation report cannot take the place of evidence in Court and for this purpose, relied on *Vijender and Others Vs. State of Delhi*, and *Kaptan Singh and others Vs. State of M.P. and another*, where the Supreme Court held that the order of acquittal based solely on the result of investigation was patently wrong. He also referred to 2001 (3) L.W. 97 *Adheenakarhar, Sri Kundrakkudi, Thiruvannamalai Mutt, Kundrakkudi v. Thiru. M. Pattabhiraman*, which pertained to the same T.D. No. 482 and by this Court had declared with the Adheenam did not have the Kudivaram right. Learned senior counsel also produced several documents which he wanted to be received as additional documents to prove the age of Bhuvanammal.

5. Learned senior counsel appearing for the respondents submitted that even de hors the investigation report, if the Tribunal had entertained some doubt regarding the documents and found that the documents have been got up only for the purpose of the proceedings and they cannot be relied on, especially when there is no material to disturb that finding, even without going into the investigation report, the claim of the appellants should be rejected. Learned senior counsel submitted that when the Kudivaram right of the Inamdar has been

denied by this Court, then it is not necessary for the respondents to show anything except the existence of buildings on the notified date as per Section 13 of the Act. Learned senior counsel further submitted that once the ingredients of Section 13 of the Act are satisfied, then ground rent patta must be granted. Learned senior counsel also submitted that no exception can be taken to the Tribunal ordering the grant of ryotwari patta since even ground rent patta and ryotwari patta are dealt with in the Act under the same Chapter and therefore, the right of the respondents must be recognised. Learned senior counsel referred to *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, , where the Supreme Court had held that when subsequent events which have a fundamental impact on the right to relief are brought to the notice of the Court/Tribunal, it cannot blink at it or be blind to the said events. Learned senior counsel, therefore, submitted that the subsequent events, viz., the enquiry report must be taken note of and therefore, the petition for receiving additional evidence must be allowed. He also relied on *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, , where the Supreme Court had held that a judgment, decree or order obtained by playing fraud is a nullity and non-est in the eye of law and it can be challenged in any Court at any time in appeal, revision, writ or even in collateral proceedings.

6. We have already referred to the order passed by the Assistant Settlement Officer on 15.7.1991 and the one by the Settlement Officer on 31.12.1991, which was confirmed by the order of the Commissioner of Land Administration on 28.5.1993. We have also referred to the order passed on remand dated 9.9.1993 by the Assistant Settlement Officer. In the impugned order of the Tribunal, the Tribunal proceeded, inter alia, to decide the issue on the basis of the assumption that if the Kudivaram right had been with the Kundrakkudi Adheenam, then Pattammal and her husband would not have purchased the property and that they would have definitely brought the Adheenam on record, and if the Kudivaram right had not gone with the property from Thirunavukkarasar and others, they would not have sold it to Garlic and Company. The Tribunal also held that the Roka Pattas and Muchalikkas "could not have come into existence at the point of time mentioned in the said documents for the simple reason that at the relevant period, Bhuvanammal was just ten years old" and therefore they must have come into existence for the purpose of this case. So basically, the decision was based on presumption rather than facts.

7. There is no controversy with regard to the issue that fraud renders all actions null and void. We also have no quarrel with the proposition that subsequent events, if they have a bearing on the issue, must be taken note of. At the same time, we also have to consider to what extent the subsequent events can be taken note of. In the present case, merely because a charge sheet has been filed, we cannot reject the appeal filed by the persons who are arrayed as accused in the charge sheet. It is true that the charge relates to falsification of records. But the criminal trial has not reached a conclusion and therefore, if the appellants can produce documents which are genuine and which support heir

claim under the provisions of the Act, they should be allowed and they cannot be shut out merely on the basis of one document which leads to the conclusion that the person to whom the Izaradar granted patta was only ten years old on that date. We have also not forgotten that an attempt was made by the appellants to produce a document, which was disbelieved by this Court. But it is brought to our notice that factually she could not have been ten years old on that date and the learned senior counsel submits that if an opportunity is given, it would be possible to produce the details of the births of the seven children, which would clearly establish at least how old Bhuvanammal would have been on the date of the issuance of the patta or that at least she was not ten years old.

8. As regards pattas and Muchalikkas, Section 8 of the Act deals with grant of ryotwari pattas to a person lawfully entitled, which term we have already referred. Section 9 deals with the grant of ryotwari pattas in cases not covered by Section 8. u/s 13(1), the Act declares that the buildings situated within the limits of an inam land shall vest in the person who owned it immediately before the appointed day and Section 13(2) provides that "building" would include the appurtenant land too. "Inamdar" as defined by Section 2(6) is the person who held the inam immediately before the appointed day. "Inam" means, as per Section 2(5), a grant of the Melvaram in any inam land or a grant of both the Melvaram and Kudivaram in any inam land. Therefore, without the grant of the Melvaram, there can be no inam. Either it is the grant of the Melvaram alone or along with Kudivaram. Therefore, any one who claims any right in respect of any inam cannot do so de hors the Melvaramdar. Section 3(d) of the Act protects certain rights of persons cultivating any land in the minor inam and also limits the rights and privileges which an Inamdar shall be entitled to or the rights and privileges of any person against such Inamdar. For the grant of ryotwari pattas u/s 8, the person claiming to be entitled to Kudivaram right must prove by virtue of any grant in his favour, and mere possession or cultivation of lands for any length of time cannot be equated to Kudivaram interest vide 1998 (1) L.W. 448 V. Subramanya Thevar v. Kannan.

9. The Madras Estates Land Act, 1908 refers to Izaradar as a farmer of rent, but we must remember here that a minor inam, by its definition, inter alia, is any inam which is not an estate within the meaning of Section 3(2)(d) of the Estates Land Act or Section 2(9) of the Minor Inams Abolition Act. Of course, the explanation to Section 2(9) of the Minor Inams Act provides that if the land is granted on service tenures and is governed by Section 17(1)(b) and (2) of the Inams Abolition Act or Section 14(1)(b) and (2) of the Inams Abolition Act, it is deemed to be a minor inam. The Madras Estates Land Act refers to pattas and muchalikkas and as submitted by the learned senior counsel for the appellants, this patta is not what we understand, viz. as pattas. The pattas and muchalikkas are exchanged subject to the provisions of Chapter IV of the Madras Estates Land Act. The contents of the patta and muchalikka are listed in Section 51; suits can be filed to obtain patta u/s 55 of the Act and to enforce the acceptance of patta u/s 56; and u/s 58, the Village Karnam shall regularly sign and register the

pattas and muchalikkas in respect of the holding. From the above provisions, we have to conclude that the pattas granted under this Act stand on a different footing and cannot be brushed aside as got up for the purpose of the proceedings.

10. We will now discuss the history and the entitlement and the rights of Kudivaram and Melvaramdars. In 2001 (3) L.W. 97 (supra), the same Adambakkam Village and the rights of the Adheenakartha was in question. The Settlement Officer had held that the appellant-Adheenam held only the melvaram and not both the varams. The Izaradar had given a statement before the Assistant Settlement Officer "to the effect that the whole village was granted as inam to the Adheenam and that he enjoyed both the varams in the village". There was an order dated 14.10.1971 that the grant was a part village grant or a minor inam grant. The Assistant Settlement Officer arrived at, inter alia, the following conclusions:

that the Inam fair register extract does not throw any light about the Iruvaram right;

that the various documents, sale deeds, mortgage deeds, settlement deeds, etc. considered along with the pattas issued by the Inamdar as well as its Izaradar disclose that the villagers had Kudivaram rights;

that the Muchalikkas, Roka pattas and Manaivari pattas granted by the Inamdar and Izaradar disclose that in the event of failure to pay the Thirway, Provisions of Act 8 of 1965 and Madras Act 1 of 1908 would be invoked to realise the arrears, that though it was contended that since it has been now declared that the grant to the institution was not an estate and since Act 1 of 1908 cannot be invoked, those wordings are invalid while the fact remained that the Inamdar himself issued pattas between 1906 and 1964 and that further entries in Adangals for faslis 1356, 1357, 1375, 1363 (Ex.C11 series) disclose that except Patta No. 7, all other lands were in the holding of the Ryots;

that the Inamdar held both varams in respect of patta No. 7 alone and in respect of other lands, Kudivaram rights were held by the objectors-villagers.

The matter was argued at length and all the decisions with regard to these Acts, viz. Act 26 of 1948 and Act 30 of 1963 were referred to and it was submitted that under Act 30 of 1963, what has to be shown is possession of both varams, whereas the concept was different under the Estate Lands Act.

11. In (1978) 91 L.W. 142 The Karivaradaraja Perumal Temple at Pollachi v. K.S.J. Raju Chetiar and Ors. it was held that the expression "lawfully entitled to Kudivaram occurring in Section 8(1) would only be applicable to the cases where the person claiming to be entitled to ryotwari patta is in possession to show that he was entitled to Kudivaram interest under the very terms of the grant of the inam. The Division Bench, in 2001 (3) L.W. 97 (supra), after referring to this case, came to the conclusion that the Adheenam had never held the Kudivaram

right and the villages were holding the lands as ryots and that in T.D. No. 482 of 1862, the Melvaram right in varouf of the Adheenam was confirmed. Therefore, the Division Bench held that as per Section 44 of the Act, where the inam is granted for the benefit of any religious, educational or charitable institution for rendering service, the presumption is that the grant consists of both the varams, unless the contrary is proved. In the above case, the Adheenam contended that the grant was a continuous one for the service of Sri Kalahastiswara Swamy in the Madam of Deivasigamani Desiga Sannadhi and therefore, the benefit of Section 44 would enure to them. As we have said already, the Division Bench held otherwise and all the counsel submit that the matter has gone before the Supreme Court. This is a fact that we must bear in mind since it will have an effect on the right claimed by the parties herein.

12. In 1970 (2) M.L.J. 316 Mannarswami Nattar v. Arumugha Mudaliar a learned single Judge of this Court dealt with the Estates Land Act. The plaintiff therein filed the suit for, what he called, is a Melvaram share. The defendants resisted it saying that with the vesting of the estate, the liability to pay Melvaram ceased and the question was, whether the defendants were ryots. The plaintiff traced his title to a revenue sale and the sale deed showed that the property was not the Roka patta of the vendor. On the basis of these documents, the learned single Judge held that the plaintiff was the recognised pattadar of the lands and he was paying the kist due to the land holder. The defendant claimed that they were in occupation even from prior to 1908. It was held thus:

...But there is no proof that they were ever in possession directly under the Zamindar, paying kist to the Zamindar. They and their predecessors were admittedly paying shares in the yield to the plaintiff and his predecessors. The defendants made a feeble suggestion that the plaintiff and his predecessors were Izaradars. But the Courts below have found that there is no evidence to warrant it. The plaintiff and his predecessors-in-title were not just farmers of revenue, collecting rent for the landlord. They were not realising from the defendants and their predecessors what otherwise the landholder was entitled to receive from them interposing themselves between them and the landholder. The plaintiff and his predecessors acquired title to the suit properties under the Zamindar either in revenue sales of the kudivaram interest or by purchase from pattadars of the lands, with liability to pay rent to the landholder.

13. In Society of St. Joseph's College Vs. A. Doraisami (died) and nine others, where Act 30 of 1963 was in question, there is an explanation of the scope of these Acts. It was held thus:

4. Inams were granted by sovereigns for religious and charitable purposes. Inam in some cases comprised of right to collect the assessment in a particular village, and the same is termed as an Inam Estate. In some cases, it comprised of land free of assessment which is called Iruvaram Inam Lands. Inam which comprised of Iruvaram lands, which do not fall in the category of Inam Estates are called Minor Inams. Such minor Inams were alienated indiscriminately by the Inamdars

and the purpose of the grant was not achieved. There were difficulties in resuming the Inam by the Government on account of long possession by the alienees and the rights flowing from such long possession. Hence the Legislature thought it fit to recognise the possessory right acquired and to impose a ryotwari assessment on such lands. Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 30 of 1963 was enacted not only for the purpose of abolishing the Inam tenure and to convert the same into ryotwari tenure. The result is the assessment is levied on the lands and the right vested in the person in possession is recognised. The rights of a ryot who is in enjoyment of a minor Inam land, who is lawfully entitled to the Kudiwaram right and who satisfied the conditions laid down under the Act, are recognised and a ryotwari patta is given to him under the provisions of the said Act.

It was also held thus:

15. ...The provisions relating to abolition and vesting of the properties do not have the effect of obliterating or destroying such pre-existing rights, if any, except in respect of public or communal properties and the rights which inhere are the basic and fundamental rights which entitle a person to preferentially get patta under these legislations, and the same could not be equated to the grant of patta by way of assignment under the Revenue Standing Orders or under rules of assignment outside the scope of the statutory enactments. Similarly, a meticulous analysis of the scheme underlying the provisions of the Act dealing with the nature of rights dealt with by the various authorities, the manner in which such authorities adjudicate such rights and the consequences of such adjudication, disclose that they do not mean and even intend to be a substitute or alternate mode of resolution of the ordinary civil right of a citizen or for that matter persons asserting competing claims, in their attempt to project a claim for patta....

14. The duty of the Assistant Settlement Officer/Tribunal while exercising their statutory power under the Act is explained in 1992 Law Weekly 425 A.N.N.K. Mohamed Kasim v. Alagan. This is relevant and applicable to the present case, though that case arose under Act 26 of 1963:

4. ...The Assistant Settlement Officer, as well as the Tribunal were under an obligation to go into each item of the lands and to find out as to whether it is a private land or a ryoti land for the purpose of deciding the claim to ryotwari patta put forward by the parties. As we have pointed out already, the Assistant Settlement Officer held that all the lands were private lands, while the Tribunal held that all the lands were ryoti lands. In our opinion, this is over-simplification of the controversy between the parties. It is true that before the Assistant Settlement Officer, the appellants put forward the claim that all the lands were private lands. From that, it does not follow that if it is established that some of the lands were ryoti lands, the entire claim of the appellants must be thrown out. It is for the authorities below to examine which land was ryoti land and further examine with reference to such land, who was entitled to patta and under which

provision.

5. ...The Tribunal shall find out whether all the lands in the estate are private lands or ryoti lands, and if some of them are private lands and some of them are ryoti lands, the Tribunal shall further find out with reference to which private lands the appellants will be entitled to patta, if they satisfy the requirements of Section 9, and in respect of which of the ryoti lands, each of the respondents will be entitled to ryotwari patta. If by any chance, the Tribunal is not in a position to decide the matter itself, it is certainly open to it to remand the matter to the Assistant Settlement Officer.

We are of the opinion that the above observations would apply to the case on hand also.

15. Learned senior counsel appearing for the respondents produced an unreported judgment of this Court in Writ Petition Nos. 1983 and 3304 of 1967 dated 26.8.1969 K. Lakshminarayanan and Anr. v. The State Transport Appellate Tribunal and Anr. which arose out of the proceedings before the State Transport Appellate Tribunal. The learned single Judge held that once the Tribunal came to the conclusion that the appellant before it was not entitled to get permit, the only order that the Tribunal can pass is to dismiss the appeal, and the Tribunal cannot allow the appeal in part and set aside the order of the Regional Transport Authority granting permit to the other party. This was referred to, to show that when the Tribunal had given its reasons for rejecting the appeal filed by the appellants, if this Court found that the appeal was without merit, all it can do is to dismiss the appeal, but not set aside the order directing the issuance of ryotwari patta. This decision may not have much relevance to the case on hand, since we have given our reasons for setting aside the order of the Tribunal.

16. Further, we also find the submissions made by the learned senior counsel for the appellants that while the respondents makes a claim, he should know whether his claim is to be dealt with u/s 8 or u/s 13. The two have a totally different scope. We agree with him there and for this reason also, we find that the order of the Tribunal is vulnerable to attack. Since it is admitted that the claim of the Adheenam that they held both the varams is now pending consideration before the Supreme Court, any proceedings with respect to the inam in question must be in the presence of the Adheenam, though they are not party in this appeal.

17. Therefore, while the Tribunal definitely had to scrutinise whether the documents were genuine, it cannot reject the documents merely because they are not registered documents of sale. We are of the opinion that the Tribunal had been persuaded to reject the claim of the appellants only because it had concluded that Bhuvanammal was only ten years old, unless there is a registered document, the claim of the appellants cannot be upheld. We also hold that as regards the objection of the appellants that the respondents ought to know under what category they claim the patta. We are not basing our decision on the

enquiry report, it is not necessary for us to receive that application as an additional document. Further, it is well settled that the contents of a charge sheet is not a proof of guilt. At the same time, we are also not inclined to receive the additional documents filed by the appellants. On an earlier occasion, they had filed a document, the veracity of which was doubted. It was open to the appellants to produce whatever document that they think is necessary to support their case.

18. For all these reasons, the impugned order is set aside and the matter is remanded back to the Inam Tribunal, where the claims of both the claimants shall be decided. The Tribunal shall issue notice to the Adheenam, the Inamdar, before deciding the matter. It has been held by our Court that the Assistant Settlement Officer, does not have the jurisdiction to decide inter se disputes, but however, he can decide the claim on its own merit with reference to the records produced. In view of the subsequent event that is brought to our notice by the respondents, viz. the initiation of criminal proceedings for falsification of records, the Tribunal shall also examine whether the patta granted by the Izaradar is genuine and also as to whether the Izaradar had the competence to issue such patta. The Tribunal may also receive additional evidence, if produced, in accordance with law. There shall be no order as to costs. Consequently, S.T.P. Nos. 1 and 19 of 2009 are closed.