

(1964) 01 MAD CK 0044

In the Madras High Court

Case No : Writ Petition No. 1330 of 1961

Lakshmi Ammal and Another

APPELLANT

Vs

The Board of Revenue

RESPONDENT

Date of Decision : 10-01-1964

Acts Referred:

Citation : (1965) ILR (Mad) 526

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : K.S. Ramabhadra Iyer, for the Appellant; S. Mohan, for V. Ramaswami, Additional Government Pleader for State, for the Respondent

Judgement

Srinivasan, J.—The Petitioners are the widow and the son of one late Seshadrinatha Iyer, an Amin, who served in the First World War. In

the year 1941, this Seshadrinatha Iyer obtained an assignment of a portion of the land in Section No. 326/1, a poramboke, in Therkukadayam

village. According to the Petitioners, there was an assignment, but the order of grant is not forthcoming. At the time of the grant, the land was

waste cultivable land which Seshadrinatha Iyer is said to have brought under cultivation after spending a considerable amount. In 1944, under the

Grow More Food Campaign, permission was granted to convert the land to wet. Wet cultivation had been going on in this land since then.

Seshadrinatha Iyer died in 1952. It appears that in 1955, the Board of Revenue treated this as an encroachment. This survey number is part of the

water spread of a tank. Proceedings in eviction were undertaken. The Board declined to accept the contention of the Petitioners that the cultivation

of the lands was unobjectionable. The Board, however, instructed the Collector to take steps to assign some, other unobjectionable land to the

Petitioners, as, in the opinion of the Board, an extent of 92 cents in the occupation of the Petitioners could not be permitted to be used for purposes of cultivation. This proceeding led to the filing of a writ petition before this Court. During the pendency of that writ petition, attempts were made by the Petitioners to move the Board of Revenue to examine the matter afresh. It appears that the Board was agreeable to do so and in those circumstances the writ petition before this Court was not pressed and it was accordingly dismissed. A further petition was presented to the Board of Revenue, but finally, the Board declined to interfere on behalf of the Petitioners. The Petitioners complain that having regard to the circumstances under which the occupation of the land by Seshadrinatha Iyer and subsequently by them had been permitted, the order of the Board, which was made without giving an adequate opportunity to the Petitioners, is arbitrary, unjust and opposed to natural justice. It is pointed out that several government orders have been issued with regard to the cultivation of tank bed lands and Government have laid it down as a policy that even lands so assigned to landless poor persons should not be taken away from them. These orders of the Government have been ignored by the Board and in that view the Board's order is also attacked as illegal.

2. In the counter-affidavit filed on behalf of the Board of Revenue, it is stated that an application for assignment made by Seshadrinatha Iyer in 1941 in Section No. 326/1 was rejected, but subsequently, the Applicant was granted permission to cultivate the land temporarily under the Grow More Food Rules. It is claimed that on complaints from ayacutdars in Fasli 1362, the matter was enquired into and the Collector held the occupation to be objectionable. This was in 1954. These eviction proceedings led to Writ Petition No. 83 of 1958, before this Court which was not, however, pressed. On further representation made by the Petitioners the Board directed re-examination by the Collector. It finally found that the eviction proceedings could not be interfered with. It is alleged on behalf of the Respondent that the matter was considered carefully and that these are administrative orders which cannot be challenged in a writ proceeding. There is however, no specific case with regard to the various Government orders to which the petition refers, according to which the Petitioners claim that the occupation of this land by the landless poor

persons should not be disturbed.

3. A reply affidavit has been filed by the Petitioners. It is denied by the Petitioners that the land was permitted to be occupied under the Grow

More Food Campaign. Long before this Grow More Food Campaign, Seshadrinatha Iyer was granted permission by an order of the Collector,

dated 31st August 1942, to occupy the land under certain conditions. At that stage he was permitted to grow dry crops only. In 1944, however,

he was permitted to convert the land into wet and to raise wet crops. It is again averred in this reply affidavit that recent circulars of the

Government and the Board of Revenue which directly apply to this case have been completely ignored. It is the further contention of the Petitioners

that Madras Act III of 1905, has no application, for the Petitioners have never been in unauthorized occupation of the lands.

4. Mr. Ramabhadra Iyer, learned Counsel for the Petitioners, frankly concedes that he is unable to maintain that there was a regular assignment of

the land in favour of Seshadrinatha Iyer in 1941. The earliest order in relation to this land that is available is the order of the Collector, dated 31st

August 1942, whereby Seshadrinatha Iyer was allowed to cultivate temporarily one acre 13 cents in Section No. 326/1 . One of the conditions

imposed was that the land should be cultivated only with dry food crops. On that occasion, the land appears to have been inspected by the

Revenue Inspector, whose report, dated 9th October 1941, was to the effect that the portion lies at the western side of the tank and is away from

the water spread of the tank. This portion is surrounded on the north, west and south by wet fields and by the tank on the east. The tank is a minor

irrigation source. The ayacutdars under the tank had no objection to the assignment. The Revenue Inspector specifically stated that.

the portion applied for cannot be utilized for improving the capacity of the tank at any later date without detriment to the ayacut lands on the three

sides and this is not at all within the water spread. So, there is no objection to assign the lands to the Petitioner taking into consideration the military

service of the Petitioner...after transferring the extent from tank poramboke to Anadhi.

In 1957, the Minor Irrigation Supervisor again inspected the site and made the following report:

From the levels furnished above, it is very clear that the encroachment is...2 below the F.T.L. of the tank, whereas the adjoining fields surrounding the encroachment are a little more below the F.T.L. of the tank. The ayacutdars of the tank do not store the water to the F.T.L., as a large extent of the foreshore wet lands are liable for submersion.

5. He further pointed out that the supply to the tank was through two channels, that the supplies were perennial and that the ayacutdars bring their entire ayacut to cultivation without storing water to F.T.L. On calculation he pointed out that the quantity of water that the tank would be deprived of by the encroachment if the F.T.L. is restored is only 7,478 c.ft. or 0.08 m.c.ft. which is very much negligible when compared to the storage capacity of 2.48 m.c. ft. of the tank. He accordingly had no objection to the assignment.

As long back as in 1949, Government issued an order to the following effect.

Government are receiving numerous complaints that lands leased to ex-servicemen under the Grow More Food Scheme are being taken away from them and assigned to political sufferers. The attention of all Collectors is invited to the instructions in paragraph 3(4) of G.O. No. 1523

Revenue, dated 11th June 1949. They are informed that ex-service men who are in occupation of the lands under the Grow More Food Scheme

or otherwise should under no circumstances be dispossessed of their lands, if they are landless poor as defined in the G.O. referred to above. They

may be assigned such lands in accordance with the instructions in paragraph 3(4) of the Government Order.

7. The G.O. referred to dealt with the assignment of land in respect of which a ban had been previously imposed. The ban was lifted by this G.O.

and instructions with regard to permanent assignment were issued under this Government order. It was pointed out in this G.O. that isolated plots

of land at the disposal of the Government should be assigned (i) to political sufferers, (ii) ex-servicemen of the Second World War, and (iii)

landless poor persons in that order of priority. Paragraph 3 is important. Herein, as a general policy, the Government directed all unauthorized

occupants to be evicted, no matter how long they have held the lands under sivaigama occupation The exceptions to this rule were in the case of

landless poor persons. Subparagraph 4 reads thus:

In paragraph 5 of G.O. No. 999, Revenue, dated 28th April 1948, the Government ordered that very poor persons holding land under Grow

More Food leases should not be evicted on the expiry of the lease period but permitted to continue in occupation. The expression very poor

persons will have the same meaning as landless poor persons. The Government direct that lands held under lease by such persons may be assigned

to them up to an extent of 5 acres of wet or 10 acres of dry land...Land held on lease in excess of these limits may be taken away from them on

the expiry of the lease period and assigned to others.

Under a note to this paragraph, it was required that the permission of the Government should be obtained before assigning the tanked lands or

grazing ground porambores.

That the Petitioners in this case qualify under the expression landless poor persons is not denied.

8. A circular was issued by the Board of Revenue in 1961, dealing with the assignment of lands which had been originally granted under the Grow

More Food Campaign. It was pointed out herein that in certain cases the lessees had spent considerable amounts on reclamation and that in such

cases the policy of the Government was to allow occupation till the lessees were able to recoup their investment, if they are not landless poor

persons. But, when the occupants are landless persons, the Government's directions contained in the G.O. of 1949, that the occupants should be

assigned the land had to be followed. The Board specifically drew the attention of the Collectors to the G.O. referred to.

9. That the Petitioners had been in occupation of this land under a properly granted permission by the appropriate authority is not denied. Whether

the original permission was prior to the introduction of the Grow More Food Scheme or not is immaterial, for the learned Additional Government

Pleader does not deny that the occupation of this land by Seshadrinatha Iyer and subsequently by the Petitioners was permitted only under the

Grow More Food Scheme even in 1941. It was found that the occupation of the lands was unobjectionable as the level of the land was only 2

below the full tank level of the tank and the ayacutdars were particular in saying that the tank was never filled to its full capacity as it would

submerge other wet fields. It was also pointed out by the learned Counsel for the

Petitioner that fields on the three sides surrounding the

Petitioner's field were even lower in level and despite that feature they had been assigned. According to the learned Counsel, all of these relevant

features were not at all considered, more particularly the Government orders of 1949, and even the Board's proceedings of 1961, dealing with

such occupation. The question is whether an order made in these circumstances stands vitiated and has to be quashed.

10. I am unable to accept the contention of the Respondent that these are administrative orders which cannot be the subject-matter of a writ

proceeding. It is well recognized that orders regarding the assignment of lands are disposed of in a quasi-judicial manner and even the rules

contained in the Board's Standing Orders directed the disposal of applications for assignment in such manner. The rules also provide for a

hierarchy of appeal and revisional Tribunals indicating very clearly that the right agitated is in fact dealt with on at least a quasi-judicial basis. In this

particular case it is beyond dispute that the Petitioners have been in permissive occupation of the land for nearly twenty years. As landless poor

persons, they are entitled to certain privileges and an application for assignment is covered by the Government orders and the Board's proceedings

themselves. The order of the Board of Revenue does not deal with any of these aspects. Had the Petitioners been given an opportunity of being

heard, they could at least have placed these matters before the Board. An order which disposes of the Revision Petition of the Petitioners without

considering any of the relevant data can hardly be accepted as complying with the normal requirements of a quasi-judicial disposal. It may be that

by reason of the fact that the land is a part of the recognized tank-bed its occupation is prima facie objectionable. But the Government order

recognizes that even tanked lands could be assigned subject to certain conditions. I have already referred to the reports of the Revenue Inspector

and the Minor Irrigation Supervisor in this regard. Neither the counter-affidavit of the Respondent nor the arguments before me serve to indicate

that the position as reported by those technical authorities has in any way altered at the present time.

11. Mr. Ramabhadra Iyer, learned Counsel for the Petitioners, repeatedly stated that the Petitioners were willing to give up the land if the land was

actually needed for the purpose of enlarging the tank or such other purposes. I am not concerned with that aspect of the matter. In the exercise of

the writ jurisdiction, I can only examine whether the impugned order was made after observing the required procedure and whether the authority

has taken into consideration all the relevant material that it should. In my view, there has been a failure to examine the applicability of the G.O. of

1949, and the Board's proceedings of 1961 in relation to this case. There has also been a failure to furnish an adequate opportunity to the

Petitioners to meet the contentions brought forward against their occupation of the lands.

12. For these reasons, the order is liable to be and is hereby quashed. The Board will in justice to the Petitioners re-hear the matter in the light of

the above observations and make such orders as would be appropriate. There will be no order as to costs.