

(1996) 04 MAD CK 0089

In the Madras High Court

Case No : Writ Petition No. 2739 of 1984 and AAAO No. 83 of 1986

M. Veeraswamy

APPELLANT

Vs

Special Commissioner and Commissioner of Land
Administration, Madras- 5, The Director of Settlement and
The Assistant Settlement Officer Narimedu. Madurai

The District Forest Officer, Madurai North, Theni Vs M.
Veerasamy

RESPONDENT

Date of Decision : 26-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 04 MAD CK 0089

Hon'ble Judges : Srinivasan, J;S.M. Abdul Wahab, J

Bench : Division Bench

Advocate : S.S. Sundar of M/S. T.R. Rajaraman in W.P. No. 2739 of 1986 Mr. R.M. Kannappan Rajendran in AAAO.No. 83 of 1986, for the Appellant; S.S. Sundar of M/s. T.R. Rajaraman in A.A.A.O. No. 83 of 1986 Mr. P. Rajamanickam Additional Government Pleader on behalf respondents in the WP. No. 2739 of 1986, for the Respondent

Final Decision : Allowed

Judgement

Srinivasan, J.

WP.No. 2739 of 1986:-

1. This Writ petition is filed by Veeraswamy for issue of a certiorari, calling for the records relating to the order of the Special Commissioner, Commissioner of Land Administration, Chempauk, Madras in CLA.D.Dis (K) R.P 51/80 dated 14-2-1986 and to quash the same. The facts relevant for the purpose of this writ petition are shortly as follows:-

The lands in dispute viz., S. Nos. 1094/1 and 1094/4 of an extent of 1.29 acres and 33.89 acres respectively were taken over under Tamil Nadu Estates Abolition Act, Act 26 of 1948 (hereinafter referred to as the Act) on 5-3-1954 They were

registered as forest lands. Notified under S. 4 of the Tamil Nadu Forest Act was issued, followed by proclamation under Sec. 6.

2. The parents of the petitioner here have filed an application before the Assistant Settlement Officer, Madurai for issue of patta under S. 11(a) of the Act. The Assistant Settlement Officer found that their claim was based on a bogus patta, said to have been issued by the landholder for fasli 1353, and rejected the same by order dated 9-1-1964. That order was not challenged and it became final. Long afterwards, the petitioner herein and some others applied for patta outside the scope of the Act. Under G.O.Ms. No. 1312 (Rev.) dated 1967, the Board of Revenue rejected the claim. However, the Board directed the petitioner to file a revision, if so advised, to set aside the order of the Assistant Settlement Officer, issued to, 1964. A revision was presented to the Board and it was rejected as it was belated. That was by order dated 30-6-1978.

3. Thereafter, one Ranganayaki Aminal said to be the sister of the petitioner herein, filed a revision before the Director of Survey and Settlement, under S. 5 (2) of the Act against the order of the Assistant Settlement Officer, dated 9-1-1964. The Director of Survey and Settlement ignoring the prior proceedings, set aside the order of the Assistant Settlement officer and remanded the matter for fresh disposal. On remand, the Assistant Settlement Officer passed an order on 21-3-1964 granting patta in favour of the said Ranganayaki Animal holding that lands were ryotwari lands. That order was challenged by the petitioner herein before the Settlement Officer. The petitioner obtained an order of stay pending the disposal of the said proceedings. The order of stay was challenged by the said Ranganayaki Animal before the Director of Survey and Settlement, who granted interim stay. That order was challenged in a revision before the Board of Revenue in R.P. No. 51/80 dated 5-5-1980. When the revision came up before the Board for hearing on 13-9-1985, the counsel who appeared for the petitioner therein, represented to the Board that the matter had been settled between the petitioner and the respondent therein and he was willing to have the Revision withdrawn and that it could be dismissed. But the Board heard the arguments of the Advocate and perused the records. On merits, the Board found that in view of the earlier proceedings in 1964 and the order of the Board in 1978, rejecting the claim of the petitioner's parents as well as that of the petitioner, the order passed by the Director of Settlement, remanding for fresh disposal and the consequential order passed by the Assistant Settlement Officer, granting patta in favour of the petitioner's sister, were all ab initio void. Consequently, the Board held that the lands having been registered already as forest lands, the claim for patta having been refused earlier within the provisions of the Act and outside the scope of the Act, there was no case for granting the prayer of the petitioner before the Assistant Settlement Officer in the proceedings. Therefore, the Board set aside the order passed by the Assistant Settlement Officer and directed the lands to be registered again as forest poramboke in all the revenue and settlement accounts. It is the said order of the Board, which is challenged in this writ petition by the petitioner.

4. At the outset, it must be mentioned that the petitioner has no locus standi to maintain this writ petition as the order passed by the Assistant Settlement Officer in the first instance was only in favour of Ranganayaki Ammal and the petitioner had himself challenged the same before the Settlement Officer by filing a revision. It is now stated that there was a compromise between the petitioner and his sister Ranganayaki Ammal, by virtue of which, the petitioner had become entitled to the properties. Even if it is so, it will not give any right to the petitioner to maintain the present writ petition, which is one setting aside the order of the Assistant Settlement Officer made in favour of the said Ranganayaki Ammal, relying upon the compromise said to have been entered long afterwards between the petitioner and his sister.

5. It is contended before us that the only authority to whom a Revision could be filed against the order of the Assistant Settlement Officer was Director of Survey and Settlement and that such a revision was filed by the petitioner's sister in 1979 and the same was accepted by the said authority. It is argued, that the statutory authority having entertained the revision and allowed the same and remanded the matter for fresh disposal, it is not open to the Board to set aside the order passed by the Assistant Settlement Officer on the ground of finality obtained earlier in the proceedings. There is no substance in this contention. In this connection, our attention is drawn not only to the provisions under S. 5(2) and S. 11(a) of the Act, but also the relevant Rules framed under the Act. Once it is found that the order of the Assistant Settlement Officer, rejecting the claim of the parents of the petitioner had become final and the claim by the petitioner and others for issue of patta outside the scope of the Act had also been rejected in 1978 itself, the Director of Survey and Settlement had no jurisdiction whatever to entertain a Revision against the order of the Assistant Settlement Officer virtually 15 years after the order was passed and remand the matter for fresh disposal. The view taken by the Board that the order passed by the Director of Settlement and the consequential order passed by the Assistant Settlement Officer were ab initial void is perfectly correct and in accordance with law.

6. It is next contended that the Board has no jurisdiction to suo motu exercise its revisional powers under S. 7(c) and S. 7(d) of the Act. The argument proceeds that the Board could exercise such powers only if there is an application before it for revising the order of lower authority. There is no substance in this contention also. The Section does not contemplate any specific application being filed under S. 7(c) and 7(d) of the Act. The Section confers powers on the Board to cancel or set aside any orders passed by the lower authority and certainly it is open to the Board to exercise the said power sua motu whenever it is found necessary.

7. It is next contend that the order of the Assistant Settlement Officer passed on 21-3-1980 is based on documentary evidence and he has discussed the same and it should not have been interfered with by the Board in a suo motu Revision, There is no merit in this contention also. We have gone through the order of the Assistant Settlement Officer. We do not find any discussion worthy of mentioning.

Except setting out the list of exhibits and the list of witnesses, the Assistant Settlement Officer has not discussed any part of the evidence. It is not known, how he is able to say in para 8 of the order that the age of the standing crops supports his conclusion that the petitioner before him was enjoying the land as ryotwari land. In the same paragraph, he has referred to the recognition by the ex-landholder of the rights of the petitioner by way of assignment in 1944. We found from the list of exhibits appended to the order of the Assistant Settlement Officer that no patta or assignment deed had been filed before him. On the other hand, the Board referred to the circumstance that the patta on which reliance was placed by the petitioner's parents was found to be forged even as early as in 1961. Overlooking the said circumstances the Assistant Settlement Officer has, in his order dated 27-3-1980, relied upon the very same document and referred to it as assignment. On the face of it, the order of Assistant Settlement Officer, dated 27-3-1980 is unsustainable in law.

8. In any event, we are not inclined to exercise our discretionary power under Art. 226 of the Constitution in favour of a person, who rested his claim on a forged document are played a fraud in the proceedings. Now the contended that it was only the parents petitioner who made such a claim and that in the present proceedings the petitioner replaced any reliance thereon. There is no merit whatever in this contention. As pointed of earlier, the Assistant Settlement Officer has relied upon the alleged assignment in 1944 which was nothing but, the patta referred to the order of the Board of Revenue.

9. It is contended that no opponent was given by the Board of Revenue before decided to set aside the order of the Assistant Settlement Officer dated 27-3-1980. We do not accept this contention in view of the fact that the counsel for the petitioner were heard by the Board as stated in paragraph There was a necessity for any separate notice to the petition-before the order of the Assistant Settlement Officer was set aside. In any event, as pointed out by us, the petitioner is not entitled to the jurisdiction of Art. 226 of the Constitution of India as his claim is based upon a document.

10. For the reasons stated above not find any merit whatever in the was petitioner. The writ petition is dismissed. No costs.

C.M.S.A. No 83 of 1986:-

11. This appeal is by the District forest Officer, Maduri North. Theni against the passed by the District Judge, Madurai in C.M. No.90 of 1980 which in turn is against the order of the Forest Settlement Officer Bodinaickanur in claim No.1411/BNHFB of 7-9-1983.

12. The petitioner in the above writ petitioner filed a claim petition under S. 6 of the Tamil Nadu Forest Act for excluding the land S. Nos. 1094/1 and 1094/4, Alagamai Village from the notification under S. 6 on the gratlam that he had obtained ryotwari patta from the Assistant Settlement Officer under the Tamil Nadu Estates Abolition Act, by order dated 27-3-1980. Relying on the said order

of the Assistant Settlement Officer, the Forest Settlement Officer accepted the claim of the respondent herein and directed exclusion of the lands in S. Nos. 1094/1 and 1094/4 Agamalai Village of an extent of 1.29 acres and 33.89 acres respectively from the notified area reserve forest. On appeal, the District Judge, Madurai has confirmed the said order in view of the fact that the Assistant Settlement Officer has granted patta under S. 11(a) of the Tamil Nadu Estates Abolition Act. The order of the Assistant Settlement Officer dated 27-3-1980 was set aside by the Commissioner of Land Administration by order dated 14-2-1986 in CL.A.D.Dis (K) R.P. 51/1980 That order was challenged in the above W.P. No. 2739 of 1986 by the respondent herein. We have dismissed the writ petition, as stated above. In view of the dismissal of the writ petition the order of the Commissioner of Land Administration stands. Consequently, the order of the Assistant Settlement Officer does not survive. Hence the orders passed by the Forest Settlement Officer and the District Judge have to be set aside. The C.M.S.A is allowed. The orders passed in Claim No. 1411/ BNHFB by the Forest Settlement Officer and the District Judge are set aside. No costs.