

(2002) 04 MAD CK 0028

In the Madras High Court

Case No : Second Appeal No. 70 of 1991

Melkuppam Village Panchayat Board

APPELLANT

Vs

Satyanarayanan, Jayabalan, Dakshinamurthi, V.
Thiruvengadam, Premavathi, Shantha, Bhanumathi and
Kalavathi

RESPONDENT

Date of Decision : 30-04-2002

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 12

Tamil Nadu Forest Act, 1882 — Section 4

Tamil Nadu Panchayats Act, 1958 — Section 2(34), 72, 72(1), 84

Citation : (2002) 2 MLJ 571

Hon'ble Judges : A.S. Venkatachalamoorthy, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; Chitra Sampath, for T.R. Rajaraman, for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkatachalamoorthy, J.—If an example is required as to how a person can be utterly dishonest and act without conscience by

squatting on the property of the Government enriching himself without even paying a pie, here we have, (i.e.) the defendant, whose Legal

Representatives are the respondents herein. The defendant has been squatting on the property of the Government of an extent of 25.40 acres (10

hectares) for over four decades and has been successfully avoiding dispossession.

2. The plaintiff filed Original Suit No.605 of 1973 on the file of the District Munsif, Tirupattur, against the respondents herein, praying the Court to

declare that the suit lands are communal lands vested with the plaintiff/ panchayat and to direct the defendant to deliver possession of the suit

properties to the plaintiff/panchayat and for other reliefs.

3.The case of the plaintiff is that the suit properties lie within the revenue village of Melkuppam which was an estate within the meaning of the

Madras Estates Land Act, 1908 and that the schedule lands are known as tank bed lands and grazing grounds as per the provisions of the Estates

Land Act and they are neither ryoti lands nor private lands of the landholder. The plaintiff would contend that the said lands are neither cultivable

nor cultivated lands, cultivated by a ryot or a landholder. It is the case of the plaintiff that after the Estate was taken over by the Government under

the provisions of Estates Abolition Act, patta proceedings were initiated by the Government. In the various proceedings, the respondent/defendant

had lost his claim that the lands were purchased from the ryots by his father under a registered document of the year 1934. In the said proceedings,

all the Courts have held that the suit properties were tank bed lands and communal lands and they could not be assigned to the prejudice of the

community and the village and that even after losing the battle, the respondent/defendant continued to cultivate the suit lands. The appellant/plaintiff

brought all the above facts to the knowledge of the Collector of North Arcot in October 1972 and nothing tangible has been done to prevent the

defendant from his contemptuous disregard of the legal position. According to the plaintiff, the suit items had been vested with the plaintiff for

management and administration for the common benefit of the community. The specific case of the plaintiff is that the suit properties are held for the

benefit of the villagers and that in spite of the repeated demands, the defendant has not withdrawn his act of trespass and the plaintiff is constrained

to file the suit.

4. The respondent/defendant resisted the suit on various grounds. According to the respondent, the plaint schedule lands are neither tank-bed

lands nor grazing grounds either under the provisions of Madras Estates Land Act or any other enactment. Old Survey Nos.91/1 and 91-2

corresponding to New Survey No.91 with an extent of 6-86 acres is not a tank poramboke as described in the plaint schedule. They are ryoti

lands purchased from ryots by the father of the defendant under a sale deed in the year 1934. Since then, his father was in undisturbed possession

and enjoyment of the said lands and after his father died in 1942, the

respondent/defendant has been in undisturbed and continuous possession and enjoyment of the same. The further case of the defendant is that Old Survey Nos.51, 52 and 53 corresponding to New Survey No.93 with an extent of 18.54 acres is not a grazing ground and that the suit lands were in the continuous possession and enjoyment of the predecessors in title to Melkuppam Mitta. The defendant's father purchased the said Mitta and since then, he was in continuous possession and enjoyment thereof and after his demise, the defendant has been. The specific case of the defendant is that the plaint schedule lands are not described either in the village accounts or in the Revenue records as a tank poramboke or grazing ground, on the other hand, they are recorded as unreserved forest and dry lands. The further case of the defendant is that the suit lands have been wrongly classified as unreserved forest in the Government and Revenue records. The remedy of the plaintiff is to approach the Collector of North Arcot for eviction under the provisions of the Land Encroachment Act. It is also contended by the defendant that the Government is a necessary party to the suit and in those circumstances, the suit is also liable to be dismissed as the same is bad for non-joinder of necessary party.

5. The trial court after elaborately considering the oral and documentary evidence came to the conclusion that

a] a perusal of Exs.B-8 and B-9 would show that that the suit lands are poramboke lands which were treated as communal ones for the benefit of

the people of Melkuppam village;

b] since suit lands are communal ones, the defendant cannot claim the suit lands to be ryoti lands, he being the owner;

c] a perusal of Ex.B9 would reveal that the Sub-collector of Tirupattur had directed the plaintiff/panchayat to take delivery of possession of the

land bearing S. No.93 with the assistance of the Tahsildar if the plaintiff/panchayat wants that land for the purpose of growing a thope of fruit

bearing trees;

d] As per G.O. Ms. No.608, L.A. dated 4.4.1960, all unassessed waste lands should be deemed to be unreserved lands vesting in the panchayat;

the suit lands also have vested with the plaintiff/panchayat;

the plaintiff/appellant shall be entitled to recovery of possession of the suit lands from the defendant;

and finally, that the government is not a necessary party to decide the dispute between the plaintiff and the defendant.

6. After the disposal of the suit and before filing the appeal, the defendant died and his Legal Representatives preferred A.S. No.2 of 1990 on the

file of the Sub Court, Tirupattur, being aggrieved by the judgment and decree in O.S. No.605 of 1973 on the file of the District Munsif, Tirupathur.

7. The learned Subordinate Judge came to the conclusion that the Government of Tamil Nadu is the owner of the suit lands and that in fact, was

also conceded by the learned counsel for the defendant. The lower appellate court also found that even if the lands are vested in the panchayat, it is

only for the Government to decide as to how the said lands should be utilised. The appellate Court also held that the suit is bad for non-joinder of

Government as a party.

8. Being aggrieved by the judgment and decree of the lower appellate court, the plaintiff has filed the above appeal before this Court. At the time

of admitting the Second Appeal, the following substantial questions of law were framed for consideration:-

a. Whether the Court below has failed to interpret correctly and properly the relevant statutory provision of Section-86 of Tamil Nadu Panchayat

Act (T.N.Act XXXV of 1958) and the instructions contained in Manual of Panchayat Administration at 411 (10)?

b. Whether the court below has not erred in holding that in spite of statutory vesting of poramboke lands in the village panchayat under Tamil Nadu

Act 35 of 1958 the Government of Tamil Nadu or Collector of North Arcot is a necessary party to the suit erred that the non-joinder of the

Government of Tamil Nadu is fatal to the maintainability of the suit and whether it ought not to have impleaded suo motu the government of Tamil

Nadu as party defendant to the suit for proper adjudication of appellant's claim if it found it necessary?

c. Whether the court below ought not to have held that the principle of res judicata is applicable to the facts of the present case and that the

respondents are precluded from going behind Ex.P-2 and Ex.P-3 and that as they are in illegal possession of the suit properties without facts or

title to the same, they are bound in law to deliver possession of the suit properties to the appellant Village panchayat in whom those properties

have become statutorily vested?

9. The property in question in the suit is comprised in two Survey Numbers viz., S.No.91 and S. No.93 of revenue village of Melkuppam, North

Arcot District, Tamil Nadu. As far as S. No.91 is concerned, the old survey number was 91/1 and 91/2, with an extent of 6.86 acres. Old survey

number for survey No.93 is S. Nos.51, 52 and 53 with an extent of 18.54 acres. The appellant filed the suit in O.S. No.605 of 193 on the file of

the District Munsif, Tirupattur, praying the Court to declare that the suit lands are communal lands vested with the plaintiff/panchayat and for a

direction to the defendant to deliver possession of the suit property to the plaintiff/panchayat. It is unnecessary to go into the discussion of factual

details pertaining to the earlier proceedings as the point for consideration lies in a narrow compass. Suffice to mention that the trial court decided in

favour of the plaintiff/panchayat holding that the suit lands are communal ones and that the defendant cannot claim the lands to be ryoti lands. The

learned District Munsif held that the lands vest statutorily in the panchayat and the entire power for determining the method of utilising the lands for

the common benefit vests in the panchayat. Being aggrieved by the said Judgment, the respondent/defendant filed an appeal in A.S. No.2 of 1990

on the file of the Sub Court, Tirupattur. Before the appellate court, the defendant/respondent conceded that the lands only belong to the

Government of Tamil Nadu. But however, the lower appellate court held that the suit lands have not vested with the panchayat for the purpose of

management and administration of the same.

10.It is necessary to briefly refer to the previous proceedings, before this Court considers whether vesting has taken place with the

plaintiff/panchayat.

The defendant/respondent approached the Special Assistant Settlement Officer, Chengalpattu, by filing an application u/s 12 of the Madras Estates

Abolition Act, way back in the year 1961, claiming ryotwari patta in respect of the properties in question. However, by an order dated 21-08-

1962, the said Settlement Officer rejected the claim. The respondent/defendant took up the matter before various authorities and ultimately came

before a Division Bench of this Court in Writ Appeal No.415 of 1970. In the said appeal, by Judgment dated 1/11/1970, the Division Bench ruled

as under:-

So far as Paimash Nos.51, 52 and 53 are concerned, the appellant himself had specifically stated that he was not claiming them to be private

lands u/s 12 (a) of Madras Act 26 of 1948. That statement was made before the Tribunal as well as before Rajagopalan, J. He is certainly bound

by that statement because eventually whether they are private lands or not would depend on the intention of the appellant himself. As for the claim

made u/s 12 (b) (iii), the finding is clear that the appellant had not been able to prove his cultivation for the required period. So far as S. Nos.91/1

and 91/2 are concerned, they are proved to be tank-bed lands, which can never be claimed to be private lands.

The appeal is dismissed.

It is interesting to note that even thereafter till date, the defendant has been somehow managing to be in possession. Admittedly, he has not paid a

single pie even though admittedly occupying Government land of a large extent of 25 acres (10 Hectares) for over four decades.

11. Coming back to the point in issue, even the lower appellate court has found that the suit properties belong to the State Government. The

question is whether they have vested with the panchayat for the purpose of management and administration.

12. Section-72 of the Tamil Nadu Panchayats Act 1958 deals with transfer to panchayats of unreserved forests and other institutions or works.

The said Section reads as under:-

72-(1)(a):- All unreserved forests in the village at the commencement of this Act shall vest in the panchayat and be administered by it for the benefit

of such village.

(b) In respect of every forests so vested, the panchayat shall, if so required by the Collector, pay to the Government such rent as the collector

may, from time to time, subject to the control of the Board of Revenue, fix in this behalf.

(2)(a):- If the Revenue Divisional Officer is of opinion that a panchayat is not administering properly a forest vesting in it under sub-section(1), he

may, by order, withdraw such forest from the control of the panchayat for such period as may be specified in the order, not exceeding the period,

if any, prescribed in this behalf. He may in respect of such forest direct that it be

vested in the panchayat union council and be administered by it.

(b) The Revenue Divisional Officer may, from time to time, by order, extend the period specified in any order issued under clause (a).

(c) Before issuing an order under clause (a) or (b), a reasonable opportunity shall be given to the panchayat to show cause against such issue.

(d) When an order is issued under clause (a) or (b), the panchayat concerned may, within three months of the service of the order, appeal against it

to the Collector, and the Collector may confirm, modify or reverse the order.

(e) The Board of Revenue may, in its discretion at any time, either suo motu or on application, call for and examine the record of any order issued

by the Revenue Divisional Officer or the Collector under sub-section(2) for the purpose of satisfying itself as to the legality or propriety of such

order, and may pass such order in reference thereto as it thinks fit.

13. Section-84 deals with vesting of water-works in panchayat.

As per Section-72(1) of the Madras Panchayats Act, all "unreserved forests" in the village would vest in the panchayat. Section 2 (34) of the Act

explains as to what is meant by "unreserved forest". The said Section reads as under:-

Unreserved forest means a forest not notified under Section-4 of the Tamil Nadu Forest Act, 1882 (Tamil Nadu Act V of 1882) and includes

unreserved land at the disposal of the government

14. G.O. No.608 dated 4th April, 1960 came to issued by the Rural Development and Local Administration Department, Government of Tamil

Nadu. In the said G.O., after considering the various provisions, it is stated as under:-

Assessed wastes are distinguished from unassessed wastes as being lands which are reserved for assignment on a permanent basis. Assessed

wastes also cannot therefore be deemed to be "unreserved forests" automatically vesting as such in the panchayat. Thus, it follows that all

unoccupied lands which, on the date of the Act, were not reserved under the Madras Forest Act, 1882, and were classified in the revenue

accounts as either forest poramboke or unassessed waste should be deemed to be unreserved land vesting in the panchayats concerned under the

Act.

It could be seen that the Government Order makes a fine distinction between the properties vested in the Panchayat under the Madras Panchayat

Act 1958 and these properties which the Panchayat could regulate with the permission of the State Government delegated to the Collectors. While

all unassessed waste vest in the panchayat, assessed waste does not and the Collector should permit the panchayat in the case of the assessed

waste (para 7 of the G.O.). Thus, neither the Collector nor the State Government need to grant any permission to the panchayat in respect of its

vested properties.

From the above discussion, it is clear that as far as Survey No.93 is concerned, it is an unassessed waste forest land which has vested with the

panchayat.

15. Section-84 of the Tamil Nadu Panchayats Act, 1958, reads as under:-

Vesting of water-works in Panchayats:- (1) All public water-courses, springs, reservoirs, tanks, cisterns, fountain wells, stand-pipes and other

water-works (including those used by the public to such an extent as to give a prescriptive right to their use) whether existing at the commencement

of this Act or afterwards made, laid or erected, and whether made, laid or erected at the cost of the panchayat or otherwise, and also any adjacent

land (not being private property) appertaining thereto, shall vest in the panchayat and be subject to its control.

Provided that nothing contained in this sub-section shall apply to any work which is, or is connected with a work of irrigation or to any adjacent

land appertaining to any such work.

(2) The Government, may, by notification, define or limit such control or may assume the administration of any public source of water-supply and

public land adjacent and appertaining thereto after consulting the panchayat and giving due regard to its objections, if any.

16. The above provisions, when read along with Clause-5 of G.O.608 dated 4th April, 1960 would show that S. No.91, which is a tank bed land

has also vested with the panchayat for administration and management. Thus, the provisions of the Act (i.e.) Sections-2(34), 72(1) [with reference

to S.No.93] and Section-84(1) [with reference to S. No.91) when read with the G.O. viz., G.O. No.608 dated 4th April, 1960, it is amply clear

that the suit lands have vested with the panchayat for administration and

management. In such an event, certainly, the Panchayat is entitled for a decree for possession, even if the suit properties cannot be declared as communal lands. Non-impleading of government as a party will not in any way affect the suit and stand in the way of this Court, granting a decree for possession.

17.It has to be pointed out that the trial court relied on this G.O. so also the various provisions of the Tamil Nadu Panchayats Act, 1958 while

decreeing the suit. The trial court, in para No.9 of its Judgment has dealt with the G.O. viz., G.O.608 (Rural Development and Local

Administration Department) dated 4th April, 1960. As against the Judgment of the trial Court, an appeal was filed by the respondent but no

ground had been raised in the Memorandum of Grounds of Appeal, questioning the applicability of the said G.O. or the findings rendered basing

on that G.O. It is also relevant to point out that the lower appellate court has not found that G.O.608 is not applicable or the finding of the trial

court on the basis of the said G.O. that the suit properties have vested with the panchayat is erroneous. The G.O. was very much before the trial

court and the respondent/defendant knew fully well about the contents of the same. If really this G.O. was not before Court at the time of trial,

certainly, the respondent/defendant would have raised a point in that regard before the lower appellate court.

18.The G.O. being a Government Order, duly gazetted, in the interests of justice, this Court can take judicial notice. The G.O. duly authenticated

as true copy, which has been produced by the Government Pleader, as instructed by this Court, is taken on file as a Court Exhibit ie., Ex.C.1.

Certainly, the respondent/defendant cannot have any objection for this Court doing so. In this regard, this Court places reliance on a ruling of the

Supreme Court reported in Union of India (UOI) Vs. Nihar Kanta Sen and Others, . In the above facts and circumstances, it will not be open to

the respondents now to say that they are taken by surprise. At the risk of repetition, it may be stated that this G.O. was very much before the trial

court and the trial court considered the same in detail in para No.9 of its judgment and the respondents did not raise any ground in the

Memorandum of Grounds of Appeal before the lower appellate Court with reference to that G.O.

19. In the result, the judgment and decree of the lower appellate court in A.S. No.2/90 are hereby set aside. There will be a decree, declaring that the appellant/plaintiff shall be entitled to recover possession of the suit properties from the defendant. Considering the peculiar circumstances of this case, this Court further directs that in case, the appellant/panchayat files an Execution Petition before the proper Court, the same shall be disposed of by the said Court in accordance with law, within a period of three months therefrom. The Second Appeal stands allowed with costs throughout.