
(1969) 09 MAD CK 0005

In the Madras High Court

Case No : Writ Appeal No's. 289 of 1966 and 236 of 1967

M.G. Chakravarthi Naicker

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 17-09-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1970) ILR (Mad) 790

Hon'ble Judges : Sadasivan, J;K.N. Mudaliyar, J

Bench : Division Bench

Advocate : V. Vedantachari, for the Appellant; S. Mohan, Government Pleader and P. Bhaskaran, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Mudaliyar, J.—One M.G. Chakravarthi Naicker and, the State of Madras are the Appellants in these two appeals respectively. They

seek to appeal against the order of Venkatadri J., in Writ Petition No. 1156 of 1963 quashing the order issued by the Government of Madras,

Revenue, Department in G.O. Ms. No. 2817, dated 19th September 1963.

2. The two writ appeals may be dealt with by us in a common order.

3. Succinctly stated, the facts are that one Manicka Naicker, the father of the 1st Respondent, K.M. Thillaimoorthy, applied in the year 1952 to

the Government for the assignment of the poramboke land in Section No. 531/1 of the extent of 2 acres 90 cents. Manicka Naicker alleged in his

petition that Chakravarthi Naicker, a political thyagi, was already given lands in Vaiyyavoor village comprised in Section No. 531/4, Section No.

531/5 and Section No. 531/6. It is seen from the records that Chakravarthi Naicker got lands assigned in his favour, the total extent being 7 acres.

Manicka Naicker also complained against the attempted trespass on the land in Section No. 531/1 of the extent of 2 acres 90 cents, which was said to be in his possession.

4. In G.O. Ms. No. 109, Revenue, dated 10th January 1953, the Government accepted the recommendations of the Board of Revenue and

directed, that the land in Section No. 531/1, of Vaiyyavoor village, Kancheepuram taluk measuring 2 acres 90 cents might be assigned in favour of

Manicka Naicker. Further, the Collector of Chingleput was requested to take steps to evict the political sufferer, Chakravarthi Naicker, from the

above land and to put Manicka Naicker in occupation with immediate effect. No doubt the assignment was subject to the usual conditions and any

other conditions, which the Collector of Chingleput might deem necessary to impose. It emerges from the records that even as late as 15th June

1967 Manicka Naicker made a grievance of the trespass committed by Chakravarthi Naicker and he prayed for an order to issue the patta in his

name. On 16th July 1967 Manicka Naicker again prayed for patta to be granted in his favour in pursuance of G.O. Ms. No. 109, Revenue, dated

10th January 1953. He further made a complaint about the non-receipt of orders from the Collector of Chingleput. The Collector of Chingleput in

his. proceedings, dated 9th May 1958, addressed to the Secretary to the Government, Revenue Department reported about the tahsildar taking

steps to evict the encroacher. He further reported about his sanctioning the transfer proposals in respect of the land in question. He reported also

about his asking the Sub-Collector, Chingleput to investigate the cause of inordinate delay in submitting the transfer proposals and to take

disciplinary action against the persons responsible. Thillaimoorthi, the first Respondent herein, states in his affidavit in the writ petition that the

learned District Magistrate (Judicial), Chingleput declared in M.C. No. 138 of 1961 on 30th December 1961, that the first Respondent's party

are in possession of the disputed property and that they are entitled to the possession thereof until evicted therefrom in course of law. Chakravarthi

Naicker filed Criminal Revision Case No. 143 of 1962 on the file of this Court against the order in M.C. No. 138 of 1961, and KAILASAM J.,

by his order, dated 6th September 1963, dismissed his petition.

5. Chakravarthi Naicker filed a petition before the Government on 11th January

1961, on the ground that he was in possession of the land. He further relied on a passage from the judgment of the Sub-Magistrate, Kancheepuram in C.C. No. 2525 of 1951 to show that he was in possession of the land during the relevant period, viz. 14th August 1951. He further alleged in that petition about some material irregularity in the procedure.

He further claimed that he was cultivating the land with paddy from 1949. On 14th September 1961, Manicka Naicker died. On 24th March

1962, K.M. Thillaimoorthi, son of Manicka Naicker filed an application before the Deputy Secretary to Government, Revenue Department, for

the assignment of the land in question. In this application he complained about the non co-operation of the local officials.

6. The District Revenue Officer, Saidapet in his proceedings, dated 20th November 1962 addressed to the Secretary to Government, Revenue

Department states as follows:

With reference to Government Memorandum No. 4550/F-1/61-2, dated 31st March 1962, I submit that it cannot be said that the late Sri

Manicka took no interest in getting possession of the land. It would not be proper to deny the legal heirs of Sri Manicka Naicker from being given

the land ordered to be assigned in G.O. Ms. No. 109, Revenue, dated 10th January 1953.

It cannot be out of the place to state here that the enoroacher who is in possession of the land assigned to the late Sri Manicka Naicker appears to

have been successfully preventing the steps taken to evict him

Ultimately the Government passed G.O. Ms. No. 2817, dated 19th September 1963, directing that the land in question should be assigned to

M.G. Chakravarthi Naicker. The Government further cancelled the order in G.O. Ms. No. 109, Revenue, dated 10th January 1953. In this order

it is significant to note that after noticing the Government order directing the assignment of the land, in question to Manicka Naicker after evicting

the enoroacher, the Government observed.

Sri Chakravarthy Naicker filed several petitions against the orders of the Government and requested assignment of the land in his favour. The

requests were however rejected.

This we find in the body of the said Government order. The above facts culled out from the records placed before the Court are necessary to meet

the argument of the learned Government Pleader, which will be noticed presently. Aggrieved by this order of the Government K.M. Thillaimoorthi

along with his mother and brother filed Writ Petition No. 1156 of 1963, which was allowed by Venkatadri J., It is against the order of Venkatadri

J., that the two writ appeals, Writ Appeal No. 289 of 1966 by M.G. Chakravarthi Naicker, and Writ. Appeal No. 236 of 1967 by the State of

Madras, have been filed.

7. The learned Government Pleader, Mr. S. Mohan, invites our attention to paragraphs 3(5), 12 and 18 of the B.S.O. No. 15 and also to form D

and contends before us that B.S.O. 15(18) is not applicable at all, and that inasmuch as the final order, which has got to be embodied in form D,

has not been issued to Manicka Naicker or his son, the first Respondent, the Government have the power and right to assign the land in favour of

Chakravarthi Naicker. We are not in a position to accept this argument When we bear in mind the contents of the earlier G.O. Ms. No. 109,

Revenue, dated 10th January 1953, directing the assignment of the land in favour of Manicka Naicker, the assignment remains to be completed

formally subject to usual conditions and any other conditions. It was open to the Collector or the other revenue authorities subordinate to him to

have made use of form D and completed the formalities of assignment. It would emerge very clearly from the statement of facts noticed earlier that

the first Respondent and his father made every effort to get the formal assignment encroacher, completed, but both of them were thwarted from

time to time by certain forces at work. In fact Manicka Naicker and his son, the first Respondent, made a grievance of the failure to the revenue

authorities. As a matter of fact even the Collector of Chingleput makes mention about his contemplated disciplinary action against the persons

responsible. It is obvious that there were no laches on the part of either Manicka Naicker or his son, the first Respondent, in pursuing the matter to

get the completion of the assignment subject to certain usual conditions or special conditions. We conclude from the facts seen from the records

produced by the learned Government Pleader before the Court and the averments in the affidavits filed by the parties that there has been laches

only on the part of the Revenue Department in pursuing the matter and completing the assignment in favour of Manicka Naicker.

8. B.S.O. 15(18) envisages a hierarchy of original, Appellate and revisional authorities, prescribing even periods of limitation for appeals and revision petitions. It is important to notice that the Collector interfere with the decisions of the subordinate officers only in cases (i) where there has been a material irregularity in the procedure, or (ii) where the decision was grossly inequitable, or (iii) where the decision exceeded the powers of the officer who passed it, or (iv) where the decision was passed under a mistake of fact or (v) owing to fraud or misrepresentation. The relevant extract of B.S.O. 15(18) is set down below:

The Board of Revenue or the Government may set aside, cancel or in any way modify the decision of any authority subordinate to them, within three years, if they are satisfied that the decision was grossly inequitable; they may exercise similar powers without any limit of time, where there has been a material irregularity in the procedure or where the decision exceeded the powers of the officer, who passed it or it was passed under a mistake of fact or owing to fraud or misrepresentation.

It is patently clear that even the powers of the Government are not unlimited. On the contrary they are constricted to the vitiating factors found in the extract to justify the interference on the part of the Government. The powers of the Government are severely delimited. The Government cannot traverse beyond this field. The learned Government Pleader relied on paragraph 3(5) of B.S.O. 15 and argued logically that in matters of disposing of land the Government are not barred from using their discretion and the discretion of the Government is unbounded and untrammelled and even arbitrary. We are inclined to think that Rule 18 may not be applicable in cases of original orders passed by Government. Assuming the content of power is located in Rule 3(5) of the B.S.O. 15, that power is only co-extensive with the power contained in Rule 18. It is exhaustive but not illustrative. To justify or warrant the interference of Government under Rule 3(5) the power of the Government in exercising discretion cannot outreach or extend beyond the limitations found in Rule 18 of the B.S.O. 15.

9. We cannot countenance the construction put by the learned Government Pleader on paragraph 3(5) of B.S.O. 15 to show that the discretion of the Government is absolute and unfettered. We are in respectful agreement with the observations of SETNIVASAN J., in *Lakshmi v. Board of*

Revenue ILR (1965) Mad. 526, 531 which is as follows:

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.

By virtue of the earlier G.O. Ms. No. 109, Revenue, dated 10th January 1953, Manicka Naicker did derive some rights in the land assigned in his

favour, and before his rights or the rights of his son, the first Respondent are invaded, the first Respondent was entitled to place certain matters

before the Government before an adverse order in the later G.O. Ms. No. 2817, Revenue, dated 19th September 1963, is passed against him.

We find no reasons given in the impugned Government order. The mere petition filed by the petition filed by the first Respondent on 24th March

1962, is not to be equated with an opportunity given to the "first Respondent to represent his case. We also do not find in the impugned

Government order any reference to any of the vitiating factors found in paragraph 18 of B.S.O. 15 to justify the cancellation of the earlier G.O.

Ms. No. 109, dated 10th January 1953. We do not consider that the discretion vested in the Government under paragraph 5 of the B.S.O. 15 is

absolute and untrammelled. S.A. de Smith in his Judicial Review of Administrative Action observed at page 277:

As was observed in a leading modern Canadian case, "there is always a perspective within which a state is intended to operate".

(iii) Where the competent authority is empowered to take such action or to impose such conditions as it thinks fit in relation to a subject, matter.

The Courts have generally declined to construe such words as investing the authority with an absolute discretion to do as it pleases.

The Minister of Transport, when empowered to make such order as he thought fit on a licensing appeal, was obliged to confine himself to matters

raised in the course of the appeal and to disregard irrelevant considerations in exercising his discretion.

At page 324 the learned author also observes:

Certiorari will issue to quash an order made by an administrative body only if the functions of that body are characterized as being at least partly

judicial. It will issue not only for error in the exercise of judicial functions, but also for error in the non-judicial element of a composite function,

provided that the error causes the body exercising these functions to exceed its powers.

Garner in his book on Administrative Law, at page 115, observes as follows:

We now come to the major ground on which the Courts in this country will review the decision of an administrative agency, namely, because the

agency has exceeded its statutory powers. Every administrative agency, whether it is a Government department, a local authority, an independent

statutory corporation or an administrative, tribunal, owes its powers exclusively to Parliament (with the sole exception of an agency operating under

and by virtue of the royal prerogative) and it will be acting ultra vires in so far as it may purport to step outside or exceed those powers; any such

purported exercise of power will therefore be void. As we have said, any ground on which judicial review may be justified can logically be

classified as a branch of the ultra vires doctrine; here we shall deal with straight forward cases where ultra vires was expressly urged as the solitary

or principal justification for judicial review. Thus, in *R. v. Minister of Transport, Ex parte Upminster Services, Limited* (1934) 1 K.B. 277 it was

held that the Minister had no power to revoke contingently a road service licence granted by the Traffic Commissioners under the Road Traffic

Act, 1930, although a person who had been refused a licence by the Commissioners was given a statutory right to appeal to the Minister.

10. In our considered opinion paragraph 5 of G.S.O. 15 is not helpful to the Government. The Government cannot step outside or exceed the

powers vested in them as enumerated in the relevant extract of paragraph 18 of B.S.O. 15. In our view the discretion vested in the Government

under paragraph 5 is severely delimited by the strict limitations enumerated in paragraph 18, which fetter, trammel and control the discretion of the

Government in the matter of disposing of lands.

11. We are only concerned here to examine whether the impugned order was made after observing the required procedure in paragraph 18 of

B.S.O. 15 and whether the Government have taken into consideration all the relevant material that they should. There has been a failure to furnish

an adequate opportunity to the first Respondent to meet the contentions of Chakravarthi Naicker against the assignment of the land in favour of

Manicka Naicker according to the earlier Government order.

12. Sri V. Vedanthachari appearing for Chakravarthi Naicker supported the contentions of the learned Government Pleader.

13. We affirm the order of Venkatadari J., passed in Writ Petition No. 1156 of 1963 quashing G.O. Ms. No. 2817, Revenue, dated 19th

September 1963, and dismiss both the writ appeal and in the circumstances there will be no order as to costs.

14. It is open to the Government to interfere with the earlier Government order in case they find sufficient material and ground as described in

paragraph 18 of the B.S.O. 15.

Sadasivam J.

15. I have had the advantage of perusing the judgment of my learned brother and I agree with him that the order of Venkatadri J. Passed in Writ

Petition No. 1156 of 1963 against which the writ appeal has been preferred should be affirmed However, I like to express my opinion on the

contention of Sri Section Mohan appearing for the Government that the rules in Board's Standing Order 15 are merely administrative in character

and that under subparagraph (5) of paragraph 3 of B.S.O. 15.

nothing contained in any of these rules shall be held to debar Government from disposing of land otherwise than under these rules at their discretion

as heretofore,

and that this Court has no jurisdiction to interfere with the order of assignment made by the Government. He relied on the decision of Veeraswami

J., as he then was, in Writ Petition No. 747 of 1959, on the file of this Court, that the rules in the Board Standing Orders relating to the assignment

are no more than administrative instructions and that they have not been framed in the exercise of any statutory power to make rules. But the Writ

Appeal No. 203 of 1962 filed against the order on Writ Petition No. 747 of 1959 was disposed of on the ground that the disappointed Applicant

for the assignment of the land cannot be said to have any legal grievance to justify his invoking the discretionary powers of this Court under Article

226 of the Constitution. Mr. Section Mohan also relied on the decision in Writ Petition No. 867 of 1963, on the file of this Court. The Petitioner in

that case applied for assignment of 2 cents of Government poramboke land in Section No. 310/1 Konnur village adjacent to his land in Section

No. 309 on the ground that by reason of the State Government acquiring two cents of his land out of the extent of six cents in Section No. 309 of

Konnur Village, he was not able to construct his building as planned. The Government assigned two cents of land in Section No. 310/1, Konnur

Village, to him at the market value. But the second Respondent in that petition, who had already encroached on the land, applied to the tahsildar

for permission to retain possession of the land by passing an order of assignment in his favour. In view of the fact that the second Respondent had

constructed a building, the Government passed the revised impugned order under which they allotted one cent to each party, namely, the Petitioner

and the second Respondent. It was urged by the learned Government Pleader in that writ petition that as an assignment becomes complete only

after the signing of the prescribed form D in appendix V of B.S.O. Volume I, the Government had jurisdiction to vary the order and in dealing with

this contention VENKATADM J., observed that there was much force in it. But he has pointed out in the earlier part of that order that by virtue of

the powers under B.S.O. 15, paragraph 18, the Government have jurisdiction to vary the prior order within three years if they are satisfied that the

earlier decision was grossly inequitable and that they may exercise similar powers without any limit of time where there has been a material

irregularity in the procedure or where the decision exceeded the powers of the officer who passed it, or where it was passed under a mistake of

fact or owing to fraud or misrepresentation. Thus the second order passed by the Government in that case could be justified under the provisions

of B.S.O. 15, paragraph 18.

16. Thus the question whether orders regarding assignment of land could be challenged by invoking the writ jurisdiction of this Court will depend

on the rights of the Petitioner and the violation of the principals of natural justice by the appropriate authority in dealing with such rights. Though the

rules in Boards Standing Orders may be only administrative instructions, the actual orders passed by the concerned revenue officials, Board of

Revenue and Government will give rise to legal rights and the disregard or violation of the rules will be relevant in dealing with those rights in write

jurisdiction.

17. Though B.S.O. 15, paragraph 3(3) enumerates the class of persons who are eligible for assignment of lands by the issue of D form patta, no

person can have a legal grievance if a person belonging to one class is preferred to a person belonging to another class. But once the tahsildar

communicates his order in form D in appendix V of Board Standing Orders volume I, as required in B.S.O.15, paragraph 12 certain legal rights

accrue in favour of the grantee. As pointed out by SBDOVASAN J., in Lakshmi v. Board of Revenue ILR (1965) Mad. 526, 531 referred to by

my learned brother, the order of the tahsildar is a quasi-judicial one subject to cancellation or modification in appeal or revision as provided in the

B.S.O. Unlike in the case of B.S.O.15, paragraph 12, which requires a communication by the tahsildar to the parties concerned in form D in

appendix V of B.S.O. apart from sending an order to the village authorities, there is no such requirement when the Government directly passd

orders as contemplated in B.S.O. No. 15, paragraph 3(5). The Government has made an order of assignment favour of Manicka Naicker, the

father of the first Respondent Thillaimoorthy and directed the Collector of Chingleput to give effect to the order by evicting Chakravarthi Naicker

from the land. By virtue of the said order, Manicka Naicker has acquired some rights in the land and the principles of natural justice require that his

rights should not be affected adversely without his being heard and except on legal ground such as those contemplated in B.S.O. 15, paragraph

18.

In the subsequent order of the Government in favour of Chakravarthi Naicker, there is absolutely no discussion as to the merits of his claim to get

the assignment of the land in his favour in spite of the prior order in favour of Manicka Naicker. It is no doubt open to the Government to interfere

with their earlier order in favour of Manicka Naicker, if Chakravarthi Naicker is able to bring his case within the provisions of B.S.O. 15,

paragraph 18, which embody only principles of natural justice usually applied in

quasi-judicial proceedings.

18. I agree with my learned brother that in the above circumstances, the writ appeals should be dismissed but without costs.