

**(2006) 01 MAD CK 0223**

**In the Madras High Court**

**Case No : Writ Petition No. 1068 of 1996**

N. Balakrishnan

APPELLANT

Vs

District Revenue Officer and Others

RESPONDENT

**Date of Decision : 03-01-2006**

**Acts Referred:**

Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act, 1971 — Section 15A, 15A(1), 15A(2), 3, 3A

**Citation : (2006) 1 LW 415 : (2006) 1 MLJ 397**

**Hon'ble Judges : R. Sudhakar, J**

**Bench : Single Bench**

**Advocate : K. Elango, for the Appellant; D. Malarvizhi, Government Advocate for RR. 1 to 3 and V. Radhakrishnan, for RR. 5 and 6, for the Respondent**

**Final Decision : Allowed**

## Judgement

R. Sudhakar, J.—The writ petition has been filed challenging the order of the first respondent-District Revenue Officer (DRO) dated 6.11.1994, allowing the revision petition filed by the fourth respondent-Natesan, since deceased, now represented in this writ petition by the respondent Nos.5 and 6, who are the sons of the fourth respondent. The first respondent, by the impugned order dated 6.11.1994, cancelled the Award No. 831/72-73 issued on 29.12.1973.

2. Facts leading to the filing of the writ petition are as hereunder:

(a) One Rajammal, the wife of Rangasamy Servai was assigned land of an extent of 0.03 cent in R.S. No. 130/3-7, Manapparavi Village of Nannilam Taluk for "kudiyruppu" by the Joint Special Deputy Collector (Kudiyruppu) u/s 3 of the Tamil Nadu Occupants of Kudiyruppu (Conferment of ownership) Act (XL of 1971) (hereinafter referred to as "the Act").

(b) Rajammal and her husband Rengasamy Servai were living in "kudiyruppu" land and the said Rajammal died in the year 1987 and in 1991, Rengasamy Servai died and there were no issues to them. During the lifetime of Rengasamy

Servai, he executed a "Will" on 19.7.1987 in favour of his eldest brother Ganapathy Servai and in this Will, he bequeathed the "kudiyiruppu" land assigned to his wife Rajammal.

(c) It is the case of the petitioner that on 2.12.1991, Ganapathy Servai entered into an agreement for sale with the writ petitioner for a sum of Rs.1,500/- and he received a sum of Rs.500/- as advance. On 25.10.1991, the fourth respondent (since deceased) made a representation to third respondent-Tahsildar, stating that "kudiyiruppu" land, measuring 0.03 cent inherited by him and that the same was assigned to the said Rajammal by the Government under the Act in Award No. 831/72-73 dated 29.12.1973. He further stated in that representation that both Rengasamy and his wife Rajammal lived in the said property in a thatched house and that they did not have any issues and they were living by receiving old age pension from the Government.

(d) It was represented by the fourth respondent in his representation that both Rajammal and Rengasamy expired and that some other person who is not connected to Rajammal and Rengasamy, is living in the said property. The fourth respondent in his representation, requested the third respondent-Tahsildar to visit the property in question and vacate the person living in that place so as to enable him to gain access to his agricultural land through the house-site property, which is the subject matter of issue in this writ petition. The fourth respondent further represented that he did not receive any compensation in respect of the property which was given as "kudiyiruppu" land to the said Rajammal.

(e) Based on the said representation of the fourth respondent, the third respondent-Tahsildar, after enquiry, passed an order dated 19.8.1992, stating as follows:

Rajammal and her husband Rengasamy holding "Kudiyiruppu" patta in S. No. 130/3-7 are the recipients of old age pension. The contention that the person receiving old age pension, has executed a Will, is not acceptable. The Will has not been registered. Only the thumb impression is affixed on the Will. However, the said Rengasamy who is said to have affixed thumb impression, has executed a document by affixing his signature. Hence, there is a doubt regarding the "Will". The person who is residing is not the legal heir of the recipient of "kudiyiruppu patta". Hence, till the Government arrives at a final decision in respect of S. No. 130/3-7, "kudiyiruppu patta", the petitioner or the respondent or anybody else should not enter into the said property.

(f) In the said proceedings of the Tahsildar, the writ petitioner participated as opposite party.

(g) Aggrieved by the order of the third respondent-Tahsildar, the fourth respondent-Natesan, claiming to be the original owner of the land, filed Appeal No. 1 of 1992 before the appellate authority-Revenue Court, Tiruvarur, and the writ petitioner was arrayed as respondent in the appeal.

(h) The main ground of attack in the said appeal is that the order granting patta to Rajammal is erroneous, improper, illegal and liable to be quashed, that no notice was issued to the land owner, the fourth respondent herein, at the time of granting patta by the Special Officer i.e. of the year 1973 and that Rajammal, the recipient of "kudiyiruppu patta", was receiving the old age pension, and hence not entitled to the said patta.

(i) It was also contended in that appeal that the said Rajammal and her husband died without heirs, that the respondent in that appeal, the writ petitioner before this Court, is making a false claim over the land and is not the heir of Rajammal and the fourth respondent herein prayed for setting aside the order granting patta.

(j) Second respondent - Special Deputy Collector, by his order dated 28.3.1994, in Appeal No. 1 of 1992, held that "kudiyiruppu patta" was granted in the year 1972 and the old age pension was given to the said Rajammal in the year 1984. Second respondent-Special Deputy Collector rejected the contention on the ground that the said Rajammal was not in receipt of the old age pension at the time of grant of patta. Further, 22 years have lapsed since the patta had been issued and objections if any, against the grant of patta, should have been made within ninety days. No reason whatsoever had been given by the fourth respondent herein before the second respondent-Special Deputy Collector as to why there was such a long delay in seeking cancellation of patta. The second respondent further held that "kudiyiruppu patta" had been issued by the Joint Special District Collector and as against the said order granting "kudiyiruppu patta", appeal will lie only to District Revenue Officer and therefore, the second respondent-Special Deputy Collector held that the Memorandum of Appeal itself cannot be entertained.

(k) Second respondent-Special Deputy Collector also accepted the contention of the respondent before him, the writ petitioner herein, that a person who is the recipient of the "kudiyiruppu patta" is entitled to sell, mortgage, lease or otherwise alienate the land in terms of Section 15-A(1) of the Act, subject to the prescription under the said Section. The second respondent-Special Deputy Collector, therefore held that the Memorandum of Appeal is not maintainable in law and the same is without jurisdiction and therefore, the appeal was rejected.

(l) The second respondent-Special Deputy Collector, while rejecting the appeal, held that he did not have the jurisdiction to interfere with the order dated 19.8.1992 passed by the third respondent-Tahsildar.

(m) As against the order of the second respondent-Special Deputy Collector dated 28.3.1994, the fourth respondent herein filed a Revision Petition before the first respondent-DRO to set aside the order of the second respondent-Special Deputy Collector and to grant the necessary relief. The first respondent-DRO passed the impugned order on 6.11.1994 and ultimately, set aside the order dated 29.12.1973 granting the "kudiyiruppu patta" to Rajammal.

(n) In the course of hearing of the Revision Petition, it was stated that both parties were given notice. The Revision Petitioner, namely the land owner, the fourth respondent herein, was represented by his counsel on 19.9.1994, i.e. the date of enquiry and though notice was issued on the respondent (the writ petitioner herein), he was not present and none represented him.

(o) Before the first respondent-DRO, it was the contention of the fourth respondent herein that the writ petitioner had a close relationship with Rajammal and Rengasamy and that he was trying to get the land by using false documents and that is why, the fourth respondent had given a representation dated 25.10.1991 to the third respondent-Tahsildar.

(p) First respondent-DRO, while passing the impugned order on the basis of the documents available on record, as the respondent before him was not present, observed as follows:

From the enquiry and the documents, it is clear that the patta-holder Rajammal pre-deceased her husband Rengasamy who is now deceased. From the fact that they were both receiving old-age pension, it is proved that they had no legal heirs. In these circumstances, this Court cannot decide on the validity of the illegal documents when neither the documents nor the sale deed have been registered nor the land has been purchased either from the assignee of the Kudiyiruppu, Rajammal or from her husband. It is learnt that the revision petitioner has not received any compensation for the 3 cents of land for which Kudiyiruppu Patta was given. It is stated that the above mentioned land for which Kudiyiruppu patta was given is situated on the way to the Revision Petitioner's land. This land is now a vacant land. Hence the Award No. 831/72-73 dated 29.12.1973 passed by the Joint Special Deputy Collector granting Kudiyiruppu patta and order No. Ku.Ka.Ma.1/92 dated 28.3.1994 passed by the Special Deputy Collector, Revenue Court, Thiruvavur are hereby set aside. If any compensation had been granted to the Revision Petitioner it may be recovered and deposited in the Government's account.

Challenging the abovesaid order of the first respondent-DRO dated 6.11.1994, the writ petition has been filed.

3. The contention of the writ petitioner who claims the property by virtue of the sale agreement executed by Ganapathy Servai who is the eldest brother of Rengasamy Servai, is that the said Ganapathy Servai came into possession of the property in question by virtue of the Will, as stated above.

4. The main attack of the writ petitioner is as follows:

(i) The appeal against the order of assignment of the "kudiyiruppu patta" in No. 831/72-73, dated 29.12.1973, should have been made within 90 days from the date of assignment. The representation made by the fourth respondent-Natesan on 25.10.1991 to the third respondent-Special Deputy Collector and the subsequent appeal filed by the said Natesan, is barred by limitation as it has

been filed after 21 years.

(ii) The assignee of the "kudiyiruppu patta", namely Rajammal, has a right to alienate the property in question after ten years from the date of assignment in terms of Section 15-A(1) of the Act, which reads as follows:

Section 15-A: Prohibition of alienation of kudiyiruppu or superstructure:

(1) Notwithstanding anything contained in Section 3, or Section 3-A no occupant of kudiyiruppu in whom the kudiyiruppu or the superstructure has vested u/s 3 or the kudiyiruppu deemed to have vested u/s 3-A and no heir or legal representative of such occupant shall, except with the previous sanction of the authorised officer, sell, mortgage, lease or otherwise alienate the whole or any portion of such kudiyiruppu or superstructure within a period of ten years from the date of the commencement of this Act.

(iii) The fourth respondent herein, claiming himself to be owner of the land, cannot challenge the "Will", which was executed in 1987 by the husband of the assignee Rajammal, which is well beyond ten years from the date of the original assignment of the "Kudiyiruppu patta.

(iv) The finding of first respondent-DRO that the land in question is now vacant, is erroneous, in view of the admission of the fourth respondent herein in his Revision Petition dated 25.10.1991 addressed to third respondent-Tahsildar stating that the land has been occupied by some one and sought for vacating the property from the person who is occupying it.

(v) The impugned order is bad in law, because, by virtue of the impugned order, the first respondent-DRO set aside the Award No. 831/72-73, dated 29.12.1973 of the Joint Special Deputy Collector, granting the "kudiyiruppu patta", by allowing Appeal No. 1 of 1992 dated 28.3.1994 filed by the fourth respondent herein and consequent to the said order, the land will be restored to fourth respondent herein, which is contrary to law and the same is contrary to Section 15-A(2) of the Act.

5. Heard learned counsel for the petitioner on the above points and learned counsel for the respondents 5 and 6 and perused the records.

6. Learned Government Advocate appearing for the respondents 1 to 3 submits that the writ petitioner did not appear before the first respondent while the Revision Petition was heard and did not file any objections. Except stating so, no other reason has been given to support the impugned order.

7. On a consideration of the abovesaid materials, it is clear that the claim of the fourth respondent herein before the third respondent-Tahsildar on 25.10.1991, is only for formation of a passage to gain access to his agricultural land situated behind "Village Natham", Plot 130/3, measuring 0.03 cents, which is the property granted by way of the "kudiyiruppu patta" to Rajammal. It is to be pointed out that at the earliest point of time, the claim of the fourth respondent is not for

cancellation of "kudiyiruppu patta" assigned to Rajammal, but for pathway alone.

8. First respondent-DRO, who was conscious of the fact that "kudiyiruppu patta" had been assigned to Rajammal in the year 1973 itself, has not given any reason as to how the claim of the fourth respondent herein is maintainable, that too, after 21 years of grant of the "kudiyiruppu patta". There is no discussion on this point, in spite of the clear finding of the second respondent-Special Deputy Collector that the appeal if any, should have been filed within 90 days, against the grant of the "kudiyiruppu patta" to Rajammal. First respondent-DRO has not addressed himself to the legal contention that the Revision Petition filed by the fourth respondent herein is for cancellation of the "kudiyiruppu patta", which should have been presented within 90 days and therefore, the same is barred by limitation as stated above.

9. The next contention of the writ petitioner is that the impugned order of first respondent-DRO is in violation of the provisions of Section 15-A(2) of the Act, which reads as follows:

Section 15-A: Prohibition of alienation of kudiyiruppu or superstructure:

(2) Where it is noticed or any information has been received that any alienation has been made in respect of any kudiyiruppu or superstructure in contravention of Sub-section (1), the authorised officer may, after notice to the occupant of kudiyiruppu and other persons affected by such alienation and after such enquiry as he thinks fit to make, by an order, declare the alienation to be null and void, if he finds that the alienation has been made in contravention of the said Sub-section (1), and on such declaration, the Kudiyiruppu or the superstructure shall, as penalty, be forfeited to, and vest in the Government free from all encumbrances.

10. Hence, even assuming for a moment that there has been alienation of the "kudiyiruppu" or superstructure in contravention of the provisions of Section 15-A(1) of the Act, the "kudiyiruppu" or superstructure shall be forfeited and the same vest in the Government free from all encumbrances. First respondent-DRO cannot pass the impugned order in violation of the provisions of Section 15-A(2) of the Act, thereby restoring the property to the fourth respondent herein.

11. The first respondent has not taken into consideration the provisions of Section 15-A(2) of the Act while setting aside the order No. Ku.Ka.Ma.1/92 dated 28.3.1994 passed by the Special Deputy Collector, Revenue Court, Thiruvavur, and fell into error by setting aside the Award No. 831/72-73 dated 29.12.1973 passed by the Joint Special Deputy Collector granting "kudiyiruppu patta" and thereby, granted the benefit of restoring the property in question to the fourth respondent herein.

12. The other contention of the writ petitioner is that there lies an appeal against the order passed by the authorised officer u/s 3-A or Section 3-B or Section 4 or Section 15-A, to the District Collector or such officer as may be specified by the

Government in this behalf, within such period as may be prescribed.

13. Section 5 of the Act provides for appeal under the provisions of the Act, which clearly specifies that "any person aggrieved by any decision or order of the authorised officer u/s 3-A or Section 3-B or Section 4 or Section 15-A may, within such period as may be prescribed, appeal to the District Collector or such officer as may be specified by the Government in this behalf.

14. The appeal has not been filed to the District Collector as specified u/s 5 of the Act. Only representation has been filed before the third respondent-Tahsildar and that too, it was only for formation of passage to gain access to the land.

15. All the abovesaid legal contentions have not been discussed by first respondent-DRO while passing the impugned order. First respondent-DRO fell into error of law in not appreciating the provisions of Section 15-A of the Act. The reason given by first respondent-DRO is contrary to the provisions of the Act mentioned aforesaid and hence, the same is not sustainable in law. The finding that the property in question is a vacant land, is contrary to the pleadings of the fourth respondent herein.

16. Hence, the impugned order of first respondent-DRO, dated 6.11.1994 is liable to be set aside, as the same has been passed without application of mind to the provisions of the Act and facts in issue.

17. The grievance of the writ petitioner is that he was not given proper opportunity during the course of hearing before first respondent-DRO.

18. In view of the above discussion, the impugned order of first respondent-DRO dated 6.11.1994 is quashed and the matter is remanded to first respondent-DRO for consideration of the issues afresh, in view of the above stated legal position. First respondent-DRO shall pass a detailed order, after affording an opportunity of hearing to the writ petitioner and the legal heirs of the fourth respondent herein (since deceased, represented by the fifth and sixth respondents herein), within a period of three months from the date of receipt of a copy of this order.

19. The writ petition is allowed in the above terms. No costs.