(1978) 04 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No''s. 3885 and 4036 of 1976

P. Muthu Pillai APPELLANT

Vs

The State of Tamil Nadu and Others RESPONDENT

Date of Decision : 27-04-1978

Acts Referred:

Cinematograph Rules, 1962 — Rule 13
Rice Milling Industry (Regulation) Act, 1958 — Section 12, 12(3), 3, 6

Citation : AIR 1979 Mad 23 : (1978) ILR (Mad) 375 : (1978) 91 LW 462 : (1977) 90 LW 462

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Judgement

Ramanujam, J.—The petitioner herein applied to the District Supply Officer, Ramanathapuram, at Madurai, for a licence to run a rice mill at Mamsapuram, on the ground that he has purchased the rice-mill from one K. K. Perumal Raja under a sale deed No. 2764/74 dated 28-9-1974, and that the existing rice-mill licence granted in favour of Perumal Raja had been surrendered. At that stage, one K. P. Alagar Raja (the 3rd respondent in these petitions) objected to the grant of the licence to the petitioner. The District Supply Officer overruled the objections and issued a licence to the petitioner on 20-6-1975.

2. Thereupon the third respondent preferred an appeal before the District Revenue Officer, Ramanathapuram, at Madurai, who confirmed the order of the District Supply Officer granting the licence to the petitioner, by his order dated 31-7-1975. Thereafter the third respondent filed a revision petition before the Government of Tamil Nadu on 15-9-1975 and the Government, without any notice tot he petitioner, who is the affected party, held that since there is dispute as regards the ownership of the property no licence should have been granted to the petitioner and, in that view, remanded the case to the District Revenue Officer for passing order afresh.

3. After remand, the third respondent filed another petition before the District

Revenue Officer requesting him to cancel the licence issued to the petitioner and to grant a licence in his favour. After hearing the parties once again, the District Revenue Officer cancelled the licence in favour of the petitioner, by an order dated 23-9-1976 on the ground that there was a dispute as to the ownership of the property. The petitioner had filed W. P. No. 3885 of 1976 questioning the validity of the order passed by the Government on 2-2-1979 in revision remanding the matter back to the District Revenue Officer for deciding the matter afresh. He has also filed W. P. 4036 of 1976 challenging the ultimate order passed by the District Revenue officer on 23-9-1976, cancelling the licence in pursuance of the directions given by the Government.

4. Two substantial points have been urged by the learned counsel for the petitioner. The first is that under the provisions of the Rice Milling Industry (Regulation) Act, 1958 and the rules framed thereunder, the order of the District Revenue Officer, who is the appellate officer, is final, that as the Government had no revisional jurisdiction the order passed by the Government on 2-2-1976 remanding the matter to the District Revenue Officer is clearly without jurisdiction and that it should, therefore, be treated as a nullity. The second point urged on behalf of the petitioner is that the order passed by the District Revenue Officer on 23-9-1976 after remand cancelling the licence is erroneous and illegal as the said Act and the rules framed thereunder do not contemplate the person applying for a licence being in lawful possession of the property. According to the petitioner it is sufficient if the person who applies for a licence is in actual physical possession of the property and merely because there is a dispute as to the ownership of the property, that cannot be a ground for the refusal or cancellation of the licence.

5. In the counter-affidavit filed by the State Government, it has not been stated under which provisions of law they have passed their order dated 2-2-1976. They had stated that the revision petition filed by the third respondent was merely forwarded to the District Revenue Officer. But, a perusal of the order of the Government dated 2-2-1976 clearly shows that the Government have expressed their mind on the issue involved and their is clear observation therein that the licence should not have been granted as there is a dispute relating to the ownership of the property. It is not, therefore, possible to accept the statement made in the counter-affidavit that the Government merely forwarded the petition to the District Revenue Officer. The order of the Government clearly indicates that they have exercised the powers of revision and have remanded the matter to the District Revenue Officer after finding that the order of the District Revenue Officer is not correct for passing orders afresh.

6. The question is whether the Government had jurisdiction to pass the order dated 2-2-76. Sec. 6 of the Rice Milling Industry (Regulation) Act 1958, enables the licensing officer to grant the licence for carrying on the milling operation in a rice-mill. In this case, there is no dispute that the District Supply Officer is the licensing officer as defined in Section 3(c) of the Act. Section 12 of the Act

provides for an appeal against any decision of the licensing officer u/s 6, within 30 days from the date on which the decision was communicated to the person, to an appellate officer who shall be nominated by the Central Government. In this case, the District Revenue Officer who disposed of the appeal filed by the third respondent, by his order dated 31-7-1975, is the person nominated by the Central Government to entertain appeals under S. 12. The order of the appellate authority under Sec. 12 is final and no further revision is provided to the State Government. In these circumstances, I do not see how the State Government can entertain a revision petition against the decision of the appellate officer rendered u/s 12. There being no provision for revision to the State Government, the order dated 2-2-1976 passed by the Government remanding the matter to the appellate officer is without jurisdiction and therefore it has to be quashed. If the order of the State Government remanding the matter is treated as having been made without jurisdiction and therefore a nullity, then the earlier order passed by the appellate officer on 31-7-1975 remains untouched, and there is no question of giving effect to the order passed by the District Revenue Officer on 23-9-1976. The order passed by the District Revenue Officer on 23-9-1976 is consequential to the order passed by the Government on 2-2-1976 which has been held a nullity and therefore, it should also be quashed. The learned counsel for the petitioner would refer to the unreported decision of this court rendered on 25-3-1977 in W. P. No. 1475 of 1974, Naina Kanniappa Mudaliar v. Dt. Supply Officer, Kancheepuram where it has been held that even though there is a dispute as to the ownership of the property that cannot be taken into account while granting a rice-mill licence under the Act, as there is no rule like rule 13 of the Cinematograph Rules which requires that the petitioner should prove to be in lawful possession of the site for which cinematograph licence is applied for. Having regard to the fact that the orders sought to be impugned in both these writ petitions are to be quashed on the ground of want of jurisdiction, it is not necessary to go into the said second contention urged by the learned counsel for the petitioner. Both the writ petitions are therefore allowed. There will be no order as to costs.

7. Petitions allowed.