

(2008) 09 MAD CK 0099

In the Madras High Court

Case No : Writ Petition No. 3910 of 2001

Padmavathi Ammal

APPELLANT

Vs

The Settlement Officer and Others

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 11(2), 13, 13(1), 3, 42

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Rules, 1965 — Rule 26(4)

Citation : (2008) 09 MAD CK 0099

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : P.V. Arulphazamnee, for the Appellant; T. Seenivasan, Additional Government Pleader for R1 and R4, M. Venkateswaran, for R3 and C. Sriranjani, for R2, R5, R6, R7, R8 and R9, for the Respondent

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the parties concerned.

2. It has been stated that the petitioner is the owner of the land and the superstructure in T.S. No. 15, in Ayanavaram Village, Chennai. After

passing of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, (Act 30 of 1963), an enquiry was held under the Act for

issuing of patta by the Assistant Settlement Officer, Chengalpattu, in SRI/77/MNW/30/63. After the enquiry he had passed an order, dated

19.7.1978, to issue Ryotwari patta in favour of the respondents 2 and 3 herein as the Manager and the Shrotrianddar, respectively, of the Water

Pandal Charity. The Assistant Settlement Officer had clearly held that the petitioner is in possession of the land in question as well as the owner of

the building thereon, as admitted by the second and third respondents. In the revision preferred by the petitioner, the Settlement Officer, S.P.II,

Thanjavur, by his order, dated 7.7.1980, in SRI/MNW/80.Se.13, had held that since the property under enquiry forms part of T.S. No. 14/1 and

regarding which the enquiry was pending before the Assistant Settlement Officer, Villupuram, after remand, as per the order passed in Inam

Appeal No. 2/75, preferred by G.V. Kamalammal and others the enquiry in respect of T.S. No. 15 is to be held along with T.S. No. 14/1.

Accordingly, the matter had been remanded.

3. It has been further stated that the Assistant Settlement Officer, Villupuram, after an enquiry had passed two orders, dated 27.6.1983, one in

respect of T.S. No. 15, in which the petitioner is a party and another in respect of T.S. No. 14/1, in which G.V. Kamalammal, the predecessor-in-

title of the petitioner and the respondents 2 and 3 herein are parties. Giving divergent and contradictory views with regard to the Water Pandal

Charity in respect of T.S. No. 15, he had held that the respondents 2 and 3 were performing the charities and managing the affairs. On the other

hand, he had held that the respondents 2 and 3 herein had not proved the existence of the water charity or its continuance or that they were the

manager and Shrotriampdar of the authority or as the village headman of Ayanavaram Village and he had also held that they are not in possession of

the land in T.S. No. 14/1. The Assistant Settlement Officer had not taken into account the fact that T.S. No. 15 is forming a part of T.S. No. 14/1

and that the enquiry had been held in common. Therefore, the petitioner herein had preferred a revision against the said order in Revision Petition

No. 14 of 1995. The said revision had been taken on file and an enquiry had been initiated, as per the order passed by this Court in W.P. No. 484

of 1986. The enquiry was adjourned on a number of occasions for the appearance of the second and third respondents. However, the petitioner

was duly represented on all the dates fixed for the enquiry. The orders were reserved in the revision petition, on 16.7.1998, by the then Settlement

Officer, after hearing the arguments of the counsel appearing for the petitioner, on 28.5.1998. The written arguments sent by the counsel was also

received by the settlement officer, on 8.6.1998. By letters, dated 8.1.1999 and 24.10.1999, the petitioner had informed the Settlement Officer

pointing out the reserving of the orders in the revision petition and also informing about the demise of her counsel. The letters had been duly acknowledged by the Settlement Officer.

4. It has been further stated that While so, all of a sudden a notice, dated 28.9.2000, had been sent to the petitioner with regard to the enquiry.

When the petitioner's husband had attended the enquiry, he was told by the first respondent that notice of the revision petition had to be served on

all the respondents. On 31.10.2000, the next hearing date of the enquiry, it was pointed out to the officer concerned that the copies of the

proceedings had already been provided to the first respondent. It was found that the concerned file did not contain the written arguments sent by

the counsel for the petitioner, who had died, even though the postal acknowledgment regarding the receipt of the same by the Settlement Officer

was available. On 24.11.2000, when the newly appointed Counsel for the petitioner wanted to see the back records to acquaint himself of the

claims and the issues involved in the matter, the documents marked and the evidence recorded, the request was rejected. Thereafter, a petition had

been filed along with an affidavit, dated 6.12.2000, stating all the facts for permitting the counsel representing the petitioner to peruse the records

and to make it available at the time of the enquiry. Copies of the deposition of the witness for which a separate application had been sent.

Thereafter, on 12.12.2000, the first respondent, at the time of the enquiry, had served a letter, dated 11.12.2000, giving the details of the Court

fees and the stamp papers to be furnished for the copy of the application requiring the depositions of the witnesses. It was also stated that the

petition for the perusal of the records had not been received. Thereafter, the enquiry was adjourned to 22.12.2000. While so, the necessary court

fees and the stamp papers were furnished by the petitioner, as required by the office of the Settlement Officer, on 22.12.2000. Even though the

first respondent had initially denied the receipt of the petition and the affidavit, dated 6.12.2000, when it was identified and found to be present

with the first respondent, he had taken it on file and copies were served to the respondents. The enquiry had been adjourned to 19.1.2001. On the

said date, the first respondent was informed about the non-receipt of the order, dated 17.1.2001, passed in the petition filed by the petitioner to

peruse the records. The first respondent had conceded the request of the petitioner to have the enquiry after 8.2.2001, as the petitioner had to

come for the enquiry from Bangalore. The petitioner was informed that the next date of enquiry would be informed through post.

5. It has been further stated that during the various stages of enquiry, the Settlement Officer had exhibited a pre-determined mind and therefore, he

has been attempting to thwart the attempts of the petitioner to peruse the records and to participate in the enquiry, effectively. He had attempted to

mark the records sent by the second respondent without serving or furnishing the copies of the same to the petitioner and to her counsel. However,

the said Settlement Officer was persuaded not to entertain the documents at the stage of the revision without a petition and an affidavit and without

notice to the other parties involved in the enquiry. On receipt of the order, dated 17.1.2001, on 22.1.2001, by the petitioner's counsel, a letter had

been sent by the petitioner's husband, dated 23.1.2001, narrating the events that had taken place, on 19.1.2001. The said letter was duly

acknowledged by the first respondent.

6. It has been further stated that a writ petition in W.P. No. 2042 of 2001, had been filed before this Court questioning the order, dated

17.1.2001, issued by the first respondent refusing the request of the petitioner to peruse the back records in the petition and the affidavit, dated

6.12.2000, filed by the petitioner.

7. In the meanwhile, the first respondent had passed the final order in the revision petition No. 14 of 1995, on 24.1.2001. However, he had signed

the order only, on 25.1.2001. The said order had been passed without giving an opportunity to the petitioner or to her counsel, even though the

first respondent had assured the counsel, on 19.1.2001, that they would be heard before the final order was passed. In such circumstances, the

petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India, raising various grounds as stated

therein.

8. In the counter affidavit filed on behalf of the first respondent, it has been stated that the suit land covered by T.D. No. 1456 in T.S. No. 15 of

Ayyanavaram village in Madras District is a Dharmadayam Iruvaram Inam Land taken over by the Government, u/s 3(b) of the Act 30 of 63,

dated 15.2.1965, notified date and the Inam tenure ceased to exist on and from the said date.

9. It has been further stated that in the statutory enquiry held by the Settlement Tahsildar, he had granted Ryotwari patta u/s 13(1) in favour of A.L.

Srinivasan, son of L.Narayana Chetty, with regard to the suit land. A.L.Srinivasan and others had filed an appeal before the City Civil Court in I.A.

No. 22 of 1973 and the matter was remitted back to the Assistant Settlement Officer, Chingleput, for fresh enquiry and disposal with the

observation that the appellant must be given an opportunity to adduce evidence before the Assistant Settlement Officer, regarding possession, as

well as the continuance of the charity. It was also observed that both the parties would be at liberty to adduce evidence during the fresh enquiry.

The Assistant Settlement Officer, Chingleput, in S.R.I/77/MNW/30/63 (Revision), dated 19.7.1978, took up the enquiry and issued notices to the

claimants and the respondents. The Assistant Settlement Officer ordered the issue of Ground Rent patta to the land in T.S. No. 15, Block No. 22

of Ayyanavaram village, u/s 11(2)(b) read with 13(1) of the Act 30/63, in favour of Varadhappaier Thanneer Pandal for the time being and declare

that the building constructed on the suit land belongs to G.Padmavathy Ammal wife of L.Gopal of Nepal.

10. It has been further stated that assailing the said order of the Assistant Settlement Officer, Chingleput, G.Padmavathy Ammal and L.Gopal of

Nepal and A.L. Srinivasan had filed a revision petition before the Settlement Officer, Thanjavur. The Settlement Officer, Thanjavur, in his

R.P.1/Section 13(1) (Revision)/80, dated 7.7.1980, had remanded the matter once again to the Assistant Settlement Officer, Villupuram, to

conduct the enquiry along with the case relating to S. No. 14/1 which had already been remanded to the Assistant Settlement Officer, by the City

Civil Court, in I.A. No. 2 of 1975. The Assistant Settlement Officer, Villupuram, took up the enquiry and issued the notices to the claimants and

the respondents observing that the suit land belongs to the Inamdar and there existed a building on the notified date, on 15.2.1965, and the owner

of the building is Padmavathy Ammal. He had decided not to grant Ryotwari patta to anyone, u/s 13(1) of the Act 30/63 and had held that it

would vest with the Government.

11. It has been further stated that aggrieved by the orders passed by the Assistant Settlement Officer, Villupuram, G. Padmavathy Ammal had filed an appeal before the Settlement Officer, Thanjavur. The said Settlement Officer, in his order S.R.11/Section 13/Purasai-Perambur/84, dated

30.4.1985, rejected her claim as time barred and the same was confirmed by the Special Commissioner and Commissioner of Land

Administration, by his order, dated 30.8.1985, in D. Dis.(K) 36904/85. Against the said order, G. Padmavathy Ammal had filed a writ petition in

W.P. No. 484 of 1986, before this Court to quash the orders of the Special Commissioner and Commissioner of Land Administration and the

Settlement Officer and to direct the Settlement Officer to consider the revision petition, dated 15.7.1985.

12. It has been further stated that this Court, by an order, dated 21.1.1984, had directed the Settlement Officer to hear the revision petition, on

merits and to dispose of the same, in accordance with law. Accordingly, the Settlement Officer, Thanjavur, took up the enquiry and issued notices

to both the parties in Revision Petition No. 14 of 1995, observing that the suit land is a "Dharmadayam land" confirmed in T.D.1456 by the Inam

Commissioner, with reference to the copy of the Inam Fair Register, produced by the respondents that A.L.Srinivasan was the major share holder

of the Shrotriamdar of Ayyanavaram Village at the time when the village was notified under Act XXVI/48. The Settlement Officer was satisfied by

the accounts produced by A.L. Srinivasan to prove the maintenance of water pandal by C.K. Jayaraman. The land in question is a Iruvaram Minor

Inam applying the presumption laid down, u/s 44 of Act 30/63. As the petitioner had not produced any document or evidence to prove that she

had purchased the suit land from the Inamdar, it was held that the possession is an unauthorised one. Further, he had observed that the rights of the

owner of the Inam lands would not be affected by the temporary discontinuance of possession or occupation, as per Section 42 of Act 30/63.

Therefore, he had allowed Ryotwari patta, u/s 8(2)(ii) of Act 30/63 to A.L.S. Kannappan and others, i.e., the present Manager of Varadappaier

Water Pandal Service. Aggrieved against the said order of the Settlement Officer, the petitioner has filed the present writ petition.

13. It has been stated that the petitioner should have approached the next appellate forum, i.e., the Special Commissioner and Commissioner of

Land Administration, before filing the present writ petition before this Court. Further, it has also been stated that the records required by the counsel for the petitioner had already been handed over to him during the course of the enquiry. The arguments were made by both the parties. However, on the verge of the completion of the enquiry, the petitioner's counsel had requested the enquiry officer to permit him to peruse the files of the Settlement Officer. As the Settlement Officer considered the request of the counsel to be against the office procedure, he had rightly rejected the request. It is the duty of the petitioner and his counsel to keep the records, handed over to him to defend his case. However, the counsel for the petitioner had simply demanded the records, wrongly and he had also requested the permission to peruse the office records only with the intention to drag on the proceedings and to delay the passing of the order. In such circumstances, since the Settlement Officer, Thanjavur, had passed the final order, after giving sufficient opportunity to both the parties and after he had conducted a detailed enquiry, the request of the petitioner is to be rejected.

14. In the counter affidavit filed on behalf of the third respondent, it has been stated that the first respondent had given ample opportunity to the petitioner before passing the order, dated 24.1.2001. The first respondent had applied his mind before passing the said order. The petitioner has been dragging on the proceedings and she has not shown that the first respondent had passed the order, without giving her an opportunity of being heard or to peruse the records. Since the land in question belongs to the Trust, the petitioner had no right or title or interest in the said land. The second and the third respondents are the Managers of the said Trust. From 1978, the petitioner has been dragging on the proceedings without exhausting the available legal remedy. The allegation that the written arguments of the petitioner was not found in the file of the first respondent is ill-founded. The petitioner has not established her right to the properties in question by the documentary evidence nor has she been able to substantiate the claims regarding the possession of the land based on legal evidence. In such circumstances, the writ petition is liable to be dismissed.

15. In the counter affidavit filed by the respondents 5 to 9, the allegations made

by the petitioner had been denied. The claim of the petitioner that she is owner of the land in question has also been denied.

16. It has been stated that the land is a Dharmadayam Iruvaram Inam Land covered by T.D. No. 1456 in T.S. No. 15 of Ayyanavaram village in

Madras District. The extract of the Fair Inam Register would clearly disclose the grant of Inam land was for the support of the Water Pandal

Charity. The second respondent's ancestor, Vellayappa Chettiar, had purchased the property in the Court auction, held in the year 1914, the

Melwaram rights of the previous Shrotriamdar of Ayyanavaram village in the minor Inam lands covered by T.D. Nos. 1456 and 1458 of

Ayyanavaram village. Further, the ancestors of the deceased second respondent were granted compensation by the Estate Abolition Tribunal in the

year, 1956, on the ground that they have title to the Inam. The deceased second respondent's father A.L. Srinivasan was Shrotriamdar of the

village and he was entitled to perform the charity. After his death, the second respondent, as a Shrotriamdar, had continued the performance of the

charity works. The third respondent is the Manager of the Water Charity Pandal.

17. It has also been stated that the Assistant Settlement Officer, in his order, dated 19.7.1978, had granted Ground Rent patta in favour of the

Varadappier water pandal, represented by the second respondent, as a Shrotriamdar and the third respondent as the Manager. In the same order,

the Assistant Settlement Officer had clearly stated that the petitioner had not established as to how the petitioner's predecessors-in-title had

acquired the right over the property and as to how they had purchased the property from a proper person.

18. It has been further stated that the Assistant Settlement Officer, Villupuram, after two enquiries, had passed two orders, dated 27.6.1983, one

in respect of S. No. 15, to an extent of 0.06 acres and another in respect of S. No. 14/1, to an extent of 120.198 grounds. In both the cases, the

Assistant Settlement Officer, Villupuram, had confirmed that the lands in question at S. Nos.14/1 and 15 were granted to Varadappier Water

pandal. He has raised certain doubts about the continuance of the charity only in respect of the land in S. No. 14/1. The order in respect of S. No.

15, with reference to Section 13(1) deals with the land and the building. The Assistant Settlement Officer in his order had discussed the issue only

in respect of land and the building. Therefore, the allegation that the Assistant Settlement Officer, Villupuram, had passed orders on the same date,

i.e., 27.6.1983, in respect of S. Nos. 14/1 and 15 giving two different, divergent and contradictory views, with regard to the Water Pandal

Charity, is denied as false. The present writ petition is only against the impugned order of the Settlement Officer, dated 24.1.2001.

19. It has also been stated that as per the direction of this Court in W.P. No. 484 of 1986, the Settlement Officer, Thanjavur, had commenced his

enquiry, on 8.9.1995 and had completed the same, on 19.1.2001. He had passed the final order, on 24.1.2001. During the course of the enquiry,

40 hearings were given. The writ petitioner and the respondents had appeared and argued before the Settlement Officer, on 19.1.2001. The

second respondent had filed his written arguments, dated 17.1.2001. Further, the Fair Inam Register for T.D.1456 had been filed before the

Settlement Officer to establish the rights of the second respondent. Therefore, the allegations made by the petitioner that the respondents did not

appear despite the several notices and that they had not filed the records are denied as false.

20. It has also been stated that the writ petitioner had delayed the enquiry proceedings by demanding the copies of the depositions and for perusal

of the back records. Even though the petitioner has been given sufficient opportunity to defend her case, she had failed to do so. On 22.12.2000,

the writ petitioner, through her counsel, had received the copy of the depositions. Only after a thorough enquiry, the impugned order had been

passed. Further, the writ petitioner had failed to prove as to how her predecessors-in-title had acquired the right over the land in question. The writ

petitioner has no right to claim patta under the provisions of Act 30/63. On the other hand, the second respondent had proved that his ancestor,

Vellayappa Chettiar, had purchased the land in Court auction held in the year 1914, the Melwaram rights of the previous Shrotriamdar of

Ayyanavaram village in the minor Inam lands covered by T.D. Nos. 1456 and 1458 of Ayyanavaram village. Further, the ancestors of the

deceased second respondent were granted compensation by the Estate Abolition Tribunal in the year, 1956, on the ground that they have title to

the Inam. The deceased second respondent's father A.L.Srinivasan was Shrotriamdar of the village and he was entitled to perform the charity.

Therefore, the Settlement Officer had conducted a fair enquiry, after going through the records and granted Riotwari patta, u/s 8(2)(ii) of Act

30/63, to the second respondent, in his order, dated 24.1.2001. Further, the writ petitioner ought to have filed a revision petition before the

Commissioner of Land Administration, Chennai, within 30 days from the date of the receipt of the order, before approaching this Court. However,

without approaching the said authority, she has filed the present writ petition before this Court, without exhausting the alternative legal remedies

available to her. Therefore, there is no merit in the present writ petition. Hence, the writ petition is liable to be dismissed.

21. The main contention of the learned Counsel appearing for the petitioner is that the petitioner has not been given sufficient opportunity to put

forth his case before the Settlement Officer. The copies of the documents relied on by the first respondent for passing his order, dated 24.1.2001,

in Revision Petition No. 14 of 1995, have not been given to the petitioner nor have they been shown to the petitioner to enable him to raise the

relevant issues during the enquiry. The refusal of the first respondent to permit the petitioner to peruse the relevant documents by his letter, dated

17.1.2001, is arbitrary and illegal as it is contrary the principles of natural justice. The statement made by the first respondent, in his letter, dated

17.1.2001, that the petitioner has been furnished with some of the records is incorrect and false. It is not open to the first respondent to say that

there is no provision of law under which the first respondent could furnish the relevant documents to the petitioner. Even after the first respondent

had rejected the request of the petitioner, by his letter, dated 17.1.2001, the enquiry was conducted and it was completed on 19.1.2001.

22. The learned Counsel appearing for the petitioner had further submitted that as per Rule 26(4) of the Tamil Nadu Minor Inams (Abolition and

Conversion into Ryotwari) Rules, 1965, the petitioner ought to have been given a reasonable opportunity to participate in the enquiry. Since such

an opportunity was not given to the petitioner, the first respondent had conducted the enquiry contrary to the provisions of law.

23. The learned Counsel appearing for the petitioner had further submitted that the averments made in paragraph 3 of the counter affidavit filed on

behalf of the first respondent are incorrect. In the said paragraph, it has been stated that the records required by the counsel for the petitioner were

already handed over to him during the course of the enquiry. Thereafter, the arguments were made on behalf of both the parties. It has been further stated that on the verge of the completion of the enquiry, the counsel for the petitioner had requested the enquiry officer to permit him to peruse the files of the settlement officer. The settlement officer, after considering the request of the counsel for the petitioner, had rejected the said request, since it was against the office procedures.

24. It has also been stated that it is the duty of the petitioner or the counsel to keep the records handed over to him to defend his case. Since the counsel for the petitioner had demanded the records, repeatedly, his request to peruse the office records had been rejected. Thus, it is clear that

the statements made by the first respondent in his counter affidavit is against the principles of natural justice and contrary to the provisions of the

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Rules, 1965. In such circumstances, the learned Counsel appearing for the

petitioner had pleaded that this Court may be pleased to set aside the impugned order of the first respondent, dated 24.1.2001, in Revision

Petition No. 14 of 1995, and to remit the matter back to the first respondent to decide the issues raised before him, on merits and in accordance

with law, after giving sufficient opportunity to the petitioner to peruse the relevant records and to put forth his case.

25. The learned Counsel appearing for the second respondent had further submitted that the petitioner ought to have preferred a revision before

the Commissioner of Land Administration to challenge the impugned order passed by the first respondent. Further, the first respondent Settlement

Officer had passed two different orders, one in respect of T.S. No. 14/1, which is not in issue before this Court and another in respect of T.S. No.

15, in Ayanavaram Village, Chennai. Therefore, it would not be open to the petitioner to challenge the validity or vires of the order passed by the

first respondent Settlement Officer, Thanjavur, the first respondent herein, in respect of T.S. No. 14/1, before this Court in the present writ

petition.

26. It was further stated that the petitioner was given sufficient opportunity to put forth his case during the enquiry before the first respondent. He

was also given all the relevant documents as seen from the records. In such

circumstances, the petitioner is only attempting to drag on the proceedings, which has been going on for many years without being completed. In such circumstances, there is no necessity to provide a further opportunity of hearing to the petitioner before the first respondent. Since there is no merit or substance in the present writ petition, it is liable to be dismissed.

27. Considering the submissions made by the learned Counsels appearing for the parties concerned and in view of the perusal of the records

available and the averments made in the counter affidavit, it is clear that the petitioner has not been given sufficient opportunity to peruse the

relevant records on the file of the first respondent before the enquiry was concluded. In his letter, dated 17.1.2001, the first respondent had stated

that there is no provision in the relevant rules to permit the petitioner to peruse the records available on the file of the first respondent. This would

clearly show that the petitioner was not permitted to peruse the records at the time of the enquiry to enable him to substantiate his claims,

effectively. The first respondent ought to have considered the request of the petitioner to peruse the records before the final order had been passed

by the first respondent, on 24.1.2001, in Revision Petition No. 14 of 1995. A denial of such a request by the first respondent is clearly contrary to

the principles of natural justice, as well as Rule 26(4) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Rules, 1965.

Therefore, this Court is of the considered view that the matter is to be remitted back to the first respondent to pass appropriate orders thereon, on

merits and in accordance with law, after giving sufficient opportunity to the petitioner, as requested by him.

28. In such view of the matter, the impugned proceedings of the first respondent, dated 24.1.2001, in Revision Petition No. 14 of 1995, is set

aside and the matter is remitted back to the first respondent to reconsider the issues raised before him and to pass appropriate orders thereon, on

merits and in accordance with law, after giving sufficient opportunity to the parties concerned and by permitting the petitioner to peruse the relevant

records available, on the file of the first respondent in the presence of the officer concerned, to enable him to put forth his case, effectively. The first

respondent is directed to complete the process of enquiry and to pass

appropriate orders thereon, within a period of four months from the date of receipt of a copy of this order.

Accordingly, the writ petition is disposed of. No costs.