

(1993) 09 MAD CK 0066
In the Madras High Court

Rangasamy Naidu

APPELLANT

Vs

Veerappan and Others

RESPONDENT

Date of Decision : 14-09-1993

Acts Referred:

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 11

Citation : (1994) 1 MLJ 410

Hon'ble Judges : Mishra, J

Bench : Division Bench

Judgement

Mishra, J.—The Assistant Settlement Officer (Enquiries) III, Pudukottai has granted ryoti patta in favour of the 1st respondent. The appeal before the Inam Abolition Tribunal (Sub Court), Pudukottai has also failed. The appellant herein has challenged the said order to issue ryoti patta in favour of the 1st respondent mainly on the ground that he, being the inamdar, was entitled to a notice and since no notice was given to him by the Assistant Settlement Officer, the proceeding before him was invalid as being violative of the principles of natural justice, and on merits that the claim of the 1st respondent is not covered by any of the provisions of the Tamilnadu Minor Inams (Abolition & Conversion into Ryotwari) Act, 30 of 1963 (hereinafter referred to as the Act). The Appellate Tribunal has rejected the appeal on the ground that : (i) since the appellant was not a party to the proceedings before the Assistant Settlement Officer he has no right to appeal against the said order, and (ii) there has been an order by the Settlement Officer besides the order of the Assistant Settlement Officer in this behalf dated 21.12.1970 in which a reference as to the patta issued in favour of the 1st respondent was specifically made and the order passed by him on 17.6.1983 (Ex. P-15) mentioned about the village settlement records thus even if there could be condonation of the inordinate delay in filing the appeal until the knowledge to the appellant by the order of the Settlement Officer dated 17.6.1983 the appeal before the tribunal was hopelessly barred by limitation. The tribunal has also made a reference to the merits of the claim of the appellant

and in this behalf made certain observations as to the genuineness of a document and the existence of any right in the appellant on the basis of such documents.

2. The hurdle as to limitation is sought to be overcome by the learned Counsel for the appellant by bringing to our notice the fact that the Assistant Settlement Tahsildar has given no notice to the inamdar and thus had not cared to know whether there was any valid transfer of kudiwaram in favour of the 1st respondent, the fact that there has been no interference in the exercise of possession by the appellant until the 1st respondent came to interfere with the possession of the appellant on the basis of the alleged patta and that it is not possible to infer any knowledge of the grant of ryoti patta to the 1st respondent only on the basis of the order of the Tahsildar (Settlement Officer) dated 17.6.1983, Ex. P-15. According to the learned Counsel for the appellant great injustice has been done to a person who has been cultivating the land throughout without any interruption when by grant of a patta in favour of the 1st respondent a basis for a claim of title to the property has been provided to the 1st respondent.

3. Learned Counsel for the 1st respondent has emphasised, however, that this Court, in appeal, should decline to entertain any plea on the merits of the claim of the appellant for the reason of the inordinate delay in filing the appeal before the tribunal and also for the reason that the appellant has not been correct in asserting that he had no knowledge until the interference when it is demonstrated by Ex. P-15 that the appellant was a party to the proceeding before the Settlement Officer and the Settlement Officer duly referred to the settlement records and the grant of patta by the Assistant Settlement Officer to the 1st respondent.

4. Determination of lands in respect of which any person is entitled to ryoti patta is made in accordance with the provisions in Section 11 of the Act which provide for enquiry into the claims of any person for a patta under the Act in respect of any inam lands. Such enquiry, however, is permitted only after a notice in the prescribed manner to the inamdar, to the Tahsildar or Deputy Tahsildar of the Taluk or the Sub-Taluk in which the inam land is situated, as the case may be, and if the person in occupation of the land is not the inamdar, to the occupant, in case the inam has been granted for the benefit of a Hindu religious institution or for service therein, to the Commissioner appointed under the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959, or to an officer specified by the said Commissioner in this behalf and if the inam is a wakf within the meaning of the Wakf Act 1954 to the Board of Wakfs constituted under that Act, or to an officer specified by the said Board in this behalf and to such other persons as may be specified in the rules made by the Government.

5. The above provision in Sub-section (2)(a) of Section 11 of the Act is for notice to specified persons. Besides the above, it is also prescribed u/s 11(2)(b) of the Act that the Assistant Settlement Officer shall publish in the prescribed manner

in the village the notice referred to above and after giving the parties who appear before him an opportunity to be heard and to adduce their evidence and to give decision, if any. Sub-section (3) of Section 11 of the Act contains a prescription that the decision of the Assistant Settlement Officer can be appealed against by any person aggrieved by his decision within three months and by the Government, if aggrieved, within one year before the appellate tribunal. The tribunal's power to extend three months time, however, is limited to a period of two months, thus if it is an appeal filed beyond a period of five months from the date of the decision of the Assistant Settlement Officer, the appeal is not maintainable.

6. A mechanical application of the above law thus will permit an appeal by a person aggrieved only within three months time from the date of the order and if it is beyond three months, it is at the discretion of the tribunal to condone the delay. But the power of the tribunal to condone the delay is further limited by a prescription of a two months period only. An order wholly without jurisdiction, an order void ab initio a non est order of the Assistant Settlement Officer thus may become final if there is no appeal before the tribunal within three months or within two months thereafter, during which period the tribunal shall have the discretion to condone the delay. That, however, can never be the intention of a legislation because a valid adjudication by the Assistant Settlement Officer alone can stand and not an order which is invalid ab initio. It is in this context that general rules of making of an order are either incorporated by statutes or read as inherently present in such provisions that the limitation for the appeal shall start running from the date the order is communicated to the party concerned and if there is no such communication from the date the person concerned has come to know about the order. The rules in this behalf made vide G.O.Ms. No. 345, Revenue, dated 10th February, 1965 as amended by G.O.Ms. No. 2105, Revenue, dated 1st December, 1967, prescribes as follows:

38. Manner of service and publication of notices and orders under the Act or the rules: Any notice or order issued or made under the Act or under these rules shall be served on the person concerned in the following manner, namely:

(a) by delivering or tendering the notice or order to the person concerned or his counsel or authorized agent or some adult member of his family; or

(b) by sending the notice or order to the person concerned by registered post acknowledgment due; or

(c) if none of the aforesaid modes of service is practicable, by affixing the notice or order in some conspicuous part of the last known place of residence or business of the person concerned or on some conspicuous part of the land to which the enquiry relates.

(2) Any notice or order which is intended for publication for general information shall, in addition to the special mode of publication prescribed in these rules, also be published by affixture in the village chavadi of the village in which the minor

inam is situate and if there is no village Chavadi, in any conspicuous public place in the village and by announcing the fact of such publication by beat of tom-tom in the village. The village officer shall certify such date of publication and the said date shall be deemed to be the date of communication of the notice or order, as the case may be, to the parties concerned.

There is no material brought before us to show:

(i) that there was any notice to the appellant of the enquiry u/s 11(2) of the Act; or

(ii) any communication of the order passed by the Assistant Settlement Officer.

There is also no material on the record to show that there has been such publication of the notice or the order from which it can be inferred that the petitioner had either notice of the enquiry by the Assistant Settlement Officer before he passed the order or he had the information of the order that the Assistant Settlement Officer had passed. Ex. P-15 only contains an endorsement by the Settlement Officer of certain records showing the 1st respondent as the person who has been granted ryoti patta. It is difficult from that alone to infer that the petitioner had any information of the order of the Assistant Settlement Officer either on 17.6.1983, or on any date before 17.6.1983, or even after 17.6.1983 except that it came to the knowledge of the appellant on 14.12.1983. He applied for a certified copy of the order on 15.12.1983 and the order copy was issued to him on 3.1.1984.

7. It goes without saying that any enquiry without notice to a person, who is entitled to such notice, shall render the enquiry wholly without jurisdiction and illegal. The condition precedent being the notice and opportunity of being heard and to adduce evidence. Enquiry u/s 11(2) of the act is no doubt a summary enquiry and as held by a Full Bench of this Court in State of Tamil Nadu Vs. Ramalinga Samigal Madam, , the enquiry u/s 11 of the Act is for revenue purposes, that is to say, for fastening the liability upon the person in occupation of the land to pay the assessment or other dues and to facilitate the recovery of such revenue from him by the Government. Any adjudication as to right, interest or title thus is not involved in the enquiry under this provision by the Assistant Settlement Officer. A judgment of the Supreme Court in Vatticherukuru Village Panchayat v. Nori V. Deekshithulu (1991) 2 S.C.C (Supp.). 228 has, however, brought the whole scheme of the law again in doubt as in this judgment, it is observed:

It was unfortunate that it was not brought to the notice of the court that the purpose of Estate Abolition Act was not solely (or the purpose of collecting the revenue to the State, The act has its birth from a long drawn struggle carried on by the ryots in Madras Presidency for permanent ryotwari settlement of tenures and grant of permanent occupancy rights and the Indian National Congress espoused their rights and passed resolution at Avadi Session to make a legislation in that regard. The recovery of revenue was only secondary. In

Syamala Rao v. Radhakanthaswami Vani 1984 An.L.J. 286. A Division Bench of the Andhra Pradesh High Court to which one of us (K : Ramaswamy, J.) was a member considered the historical background, the purpose of the Act and the scheme envisaged therein in extenso and held that the preamble of the Estate Abolition Act was to repeal the permanent settlement, the acquisition of the rights of the landholders in the estates and introduction of the ryotwari settlement therein; u/s 1(4) by issuance of the notification the pre-existing rights shall cease and determine; shall vest in the State free from all encumbrances and declared that all rights and interests created in particular over the State "shall cease and determine as against the government" protected only dispossession of a person in possession of the ryotwari patta. Section 11 envisaged enquiry into "the nature of the land" and whether "ryotwari land immediately before the notified dates" be properly included or ought to have been properly included in the holding of the ryoti. The enquiry under the Act was entrusted to the revenue authorities who have intimate knowledge of the nature of the lands and the entries in the revenue records of the holders, etc., Act created hierarchy of the tribunals, namely Assistant Settlement Officer, Settlement Officer; Director of Settlements and Board of Revenue; provided revisional powers to those authorities and ultimately the order is subject to the decision of the High Court under Article 226. In that view it was held that by necessary implication the jurisdiction, of the civil court was ousted, the decision of Settlement Authorities u/s A1 was made final and no civil suit was maintainable. The legislature having made the Act to render economic justice to the ryots and excluded the dispute between landholders and the ryots covered under Sections 12 to 15 and the ryots interse u/s 56(1)(c), from the jurisdiction of the civil court, it would not be the legislative intention to expose the ryots to costly unequal civil litigation with the State of the dispute u/s 11. It is not necessary in this case to broach further, but suffice to state that unfortunately this historical perspective and the real purpose and proper scope and operation of Estate Abolition Act was not focussed to the notice of the court.

The above, we sought only to emphasise that even a summary enquiry u/s 11(2) of the Act will have a far-reaching consequence upon the right of a person who has held the land as his private property or is entitled to hold such property and is denied the right to hold property only by an omission of the Assistant Settlement Officer in not giving notice to such person or making the order known to him in accordance with law. The effect of the enquiry being as drastic as the Supreme Court has indicated, it is necessary that every care is taken to recognise only that person who has the requisite qualification for the ryoti patta. This can be achieved by only adherence strictly to the rule of notice, affording an opportunity of being heard and an opportunity to lead evidence in support of its case to any party. A person aggrieved thus should not be denied the right of appeal merely on a plea of an indirect knowledge of any enquiry conducted by the Assistant Settlement Officer and grant of ryoti patta to some one else. We are of the opinion, accordingly, that it will not be correct on the facts of this case

to deny to the appellant herein the right of appeal before the tribunal and also the right of being heard and to adduce evidence, if any, before the Assistant Settlement Officer.

8. It is obvious that the appellant who has no notice of the proceedings before the Assistant Settlement Officer had no occasion to lead any evidence before him. There is some evidence, it is said, brought before the tribunal and the tribunal has only cursorily seen such documents to comment as follows:

Now the appellant has produced the patta, kist receipts and other documents. Ex. R-3 the patta book was issued to (one Subbiah for some other land. The name of Subbiah and other particulars were struck down and the appellant's name was inserted. Hence, I find that Ex. R-3 is not a genuine document. Exs. R-4, R-7, R-8 and R-9 are the kist receipts for a patta No. 247. The appellant has not produced the original patta No. 247 to show that the same is related to the suit properties. He has filed two house tax receipts under Exs. R-5 and R-6 to show that he has paid the house taxes for the thatched house in Survey No. 156/2 and 157/2. It is seen from Ex. P-15 that the Tahsildar has found that there are no houses owned by the appellant. The appellant has produced Ex. R-5 and R-6 show that he is in possession of the thatched house in Survey No. 156/2 and 157/2. There are no other document connecting two documents Exs. R-5 and R-6. It is to be noted if the appellant is in possession of the property till today and there is no need for him to file an appeal against the order passed by the Assistant Settlement Officer in the year 1970. Taking advantage of some defects in the earlier documents the appellants have come forward with this appeal Ex. P-14 is very clear that the first respondent has got title and possession to the suit property. There were some tenants who opposed the grant of patta to the first respondent. If the appellant and his predecessors were in possession of the suit property on the date of the enquiry, they would have agitated that the first respondent was not in the possession of the property. Considering the documents available in this case, I hold that the appellant has no title or possession of the petition mentioned lands.

The above can hardly satisfy the requirements of a right of hearing which the law has envisaged and the rules of evidence that each party must get opportunity to explain any doubts, inadequacies or inconsistencies in the evidence. Both the appellate as well as the original orders in the instant proceeding, for the reasons aforementioned are fit to be set aside. We accordingly set aside the orders aforementioned, remit the case back to the appropriate authority to proceed to hold enquiry afresh in accordance with law, after giving notice to all parties concerned including the appellant herein and to pass order after giving full opportunity of being heard to the parties including the appellant herein. In the result, the appeal is allowed as above. No costs.