
(2015) 12 MAD CK 0080

In the Madras High Court

Case No : Writ Petition (MD) No. 8425 of 2015 and M.P.(MD) No. 1 of 2015

S. Abubakkar Siddiq

APPELLANT

Vs

The District Collector, Sivagangai District and Others

RESPONDENT

Date of Decision : 18-12-2015

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(15), 3(16)

Citation : (2015) 12 MAD CK 0080

Hon'ble Judges : V. Ramasubramanian and N. Kirubakaran, JJ.

Bench : Division Bench

Advocate : M. Soalaisamy, for the Appellant; M. Alagathevan, Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—The petitioner has come up with the above writ petition, purportedly in public interest, praying for the issue of a writ of mandamus to direct the respondents 1 to 5 to remove the encroachment allegedly made by the 6th respondent in a tank.

2. Heard Mr. M. Solaisamy, learned counsel for the petitioner, Mr. M. Alagathevan, learned Special Government Pleader for respondents 1, 3 and 4, Mr. C. Selvaraj, learned Special Government Pleader for respondent No. 2, Mr. T.S. Mohammed Mohideen, learned counsel for respondent No. 5 and Mr. T. Srinivasa Raghavan, learned counsel appearing for Mr. M. Rajaraman, counsel for the 6th respondent.

3. The case of the writ petitioner is that there is a tank (known as "oorani") near a temple by name Sree Kailasa Vinayagar Temple in Survey No. 105/1, Pudhuvayal Town Panchayat, Sivagangai District, spread over an extent of about 2 acres and 7 cents. According to the petitioner, the tank is one of the main sources of water for the villagers of the panchayat. According to the petitioner, the 6th respondent attempted to put up constructions on the tank bund, in 1998, but the same was prevented by the panchayat. The 6th respondent had already

been issued with a patta under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (in short "Act 26 of 1948"), by the Settlement Officer and hence the Panchayat also took steps to get the patta cancelled. Since it could not be done, the petitioner claims to have come up with the above public interest litigation.

4. But, it appears that the above public interest litigation has not been filed really in public interest. The litigation appears to be engineered at the instance of the elected representatives of the panchayat. This can be seen from the checkered career of the litigation surrounding the tank in question.

5. All the properties, including the tank in question and the temple to which the tank is attached, originally formed part of Sivagangai Samasthanam. Way back in the year 1914, "koul" receipts had been issued to the 6th respondent, both for the purpose of maintaining the temple and the tank attached to the temple.

6. After the enactment of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, an attempt was made to cancel the patta granted in favour of the 6th respondent in respect of the very same tank. The patta had been issued under Section 18(4) of Act 26 of 1948.

7. On the proposals submitted by the Assistant Settlement Officer, the Settlement Officer, Madurai, initiated proceedings under Section 19-A. After enquiry, the Settlement Officer passed an order dated 17.06.1968, confirming the patta issued in favour of the 6th respondent Trust under Section 18(4) and dropping the proposals for the cancellation of patta. In the said order, the Settlement Officer took note of the attempt made by the Panchayat Board, not once but twice, way back in 1926 and in 1933 to take over the tank. The attempt of the Panchayat Board was defeated in a suit in O.S. No. 189 of 1933. Even in 1952, the Panchayat Board made yet another attempt to take over the tank. The said attempt was also defeated in a suit in O.S. No. 142 of 1952.

8. The order of the Settlement Tahsildar attained finality, when a Division Bench of this Court affixed its stamp of approval by Judgment, dated 16.12.1974, passed in S.T.A. No. 106/1972 and STP No. 476/1974. In a very brief order, dismissing the appeals arising out of the Settlement Proceedings, the Division Bench of this Court upheld the grant of patta in favour of the 6th respondent Trust, in respect of the tank. The said order is extracted as follows:

"The Tribunal was right in the view that the Urani was also part of the other two items, namely, the Viduthi and Velkudam. Upon that basis, it was also right in granting patta to the trust. It is contended that the Urani is used by the villagers and, therefore, it is common. But it is the common experience that an Urani of that type will be used by the villagers; but it does not give them a right of claim. Nor does it give them a right to object to the grant of patta to the trust. We see no substance in this contention. The appeal is dismissed. No costs."

9. Once again, the Panchayat Board made an attempt forcibly to take over the

tank from the 6th respondent, in the year 1999. Therefore, the trustees of the 6th respondent Trust filed a civil suit in O.S. No. 1 of 1999 on the file of the District Munsif Court, Karaikudi, praying for grant of permanent injunction restraining the Panchayat Board from interfering with the right of the Trust to maintain the tank. The suit was decreed by a judgment, dated 30.11.1999.

10. The Panchayat Board filed an appeal in A.S. No. 10 of 2000. But, the same was dismissed by the Sub-Court, Devakottai, by a judgment and decree, dated 08.10.2001. Therefore, the patta that was issued way-back in 1914 continues to be in favour of the 6th respondent Trust even till date.

11. Frustrated by their failure in all the attempts that they have made, right from 1926 upto the year 2000, the elected representatives of the Panchayat Board appear to have set-up a third party to come up with a public interest litigation, purportedly for the removal of the alleged encroachment, on what can be superficially termed as a "water body".

12. The main ground on which the writ petitioner seeks the eviction of the 6th respondent Trust from the tank in question is that under Section 14-A(2) of Act 26 of 1948, inserted by way of amendment under the Tamil Nadu Act 49 of 1979, any ryotwari patta granted in respect of any private tank or oorani under Act 26 of 1948, before the date of publication of the Amendment Act, shall stand cancelled. Therefore, the case of the petitioner is that with effect from the date of coming into force of the amendment, the 6th respondent cannot fall back upon the patta issued under the settlement proceedings.

13. We have carefully considered the above submissions.

14. Section 14-A of Act 26 of 1948, no doubt prohibits the grant of ryotwari patta in respect of any private tank or oorani, with effect from the date of coming into force of the Tamil Nadu Act 49 of 1974. Not stopping at that, it goes one step further to cancel the ryotwari patta already granted even before the coming into force of the Amendment Act.

15. But, it must be remembered that Section 14-A of Act 26 of 1948 applies only to ryotwari patta. The words "ryot" or "ryoti" or "ryotwari" or "ryotwari patta" are not defined in Act 26 of 1948. However, Section 2(1) of Act 26 of 1948 states that all expressions defined in the Estates Land Act shall have the respective meanings as in that Act with the modifications, if any, made by this Act. The expression "Estates Land Act" is defined in Section 2(4) of Act 26 of 1948 to mean the Tamil Nadu Estates Land Act, 1908.

16. Section 3(15) of the Madras Estates Land Act, 1908 defines the word "ryot" to mean "a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it".

17. The expression "ryoti land" is defined in Section 3(16) under the Madras Estates Land Act, 1908, as follows:

"(16). "Ryoti land" means cultivable land in an estate other than private land but does not include--

(a) beds and bunds of tanks and of supply, drainage, surplus or irrigation channels;

(b) threshing floor, cattle-stands, village-sites, and other lands situated in any estate which are set apart from the common use of the villagers;

(c) lands granted on service tenure either free of rent or on favourable rates of rent if granted before the passing of this Act or free of rent if granted after that date, so long as the service tenure subsists."

18. Therefore, by virtue of Section 2(1) of Act 26 of 1948, the definition of the expressions "ryot" and "ryoti land" available in subsections (15) and (16) of Section 3 of the Madras Estates Land Act, 1908 have to be imported into Act 26 of 1948. Once this is clear, what has to be seen next is as to what a "ryotwari patta" is.

19. Section 11 of Act 26 of 1948 entitles every ryot in an Estate to ryotwari patta in respect of all ryoti lands and all lanka lands. Section 12 entitles the landholders of a Zamindari Estate to be entitled to ryotwari patta in respect of all lands that are indicated in clauses (a) & (b) of Section 12. Similarly, Section 13 of Act 26 of 1948 deals with the entitlement of a landholder to ryotwari patta in an Inam Estate. Section 14 deals with the grant of ryotwari patta to the holders of lands in an under-tenure estate.

20. The Scheme of Sections 11 to 14 of Act 26 of 1948 would show that they deal, respectively, with (i) ryot in an estate, (ii) landholders in a zamindari, (iii) landholders in an iname estate, and (iv) landholders in an under-tenure estate.

21. Section 14-A covers ryotwari patta granted in respect of a private tank or oorani. But, if Section 14-A is to be attracted, what was granted should have been a ryotwari patta. The term "ryotwari" has to be understood in the context of the definition of the expression "ryot" in Section 3(15) and the expression "ryoti land" in Section 3(16) of the Madras Estates Land Act, 1908.

22. If so analysed, it will be clear that the tank attached to a temple, managed either privately or by the Department of Hindu Religious and Charitable Endowments, would not come within the purview of Section 14-A of Act 26 of 1948. Hence, the very basis on which the petitioner has approached this Court is completely wrong.

23. Heavy reliance is placed by the petitioner on the judgment of a Division Bench of this Court in M. Gopalakrishnan v. The District Collector, Madurai District and others - {W.P.(MD) No. 8286 of 2012, decided on 06.08.2014}. In the said decision, what were in dispute were three tanks, located in Melur Taluk of Madurai District. But, in the said case, there was a dispute as to whether the

tanks in question were public tanks or private tanks. It was found that the Settlement Officer had not recorded a clear finding with regard to this aspect. Another important aspect that led the Division Bench of this Court to allow the writ petition in M. Gopalakrishnan was that even the Settlement Officer was concerned with a question as to whether a grant in favour of the private respondent consisted "melvaram" or "kudivaram". Therefore, the definition of the expressions "ryot", "ryoti land" and "ryotwari patta" were satisfied in the said case. Hence, the decision is of no assistance to the petitioner herein.

24. In *Government of Tamil Nadu v. Peria Pallivasal* -{2000-1-L.W. 154}, a learned Judge of this Court took note of Section 14-A of Act 26 of 1948, inserted under the Amendment Act 49 of 1974 and yet concluded that the rights of the holder of the patta should be protected. The said decision was followed by another learned Judge of this Court in *Arulmighu Chokkanathasamy Thirukoil v. Chokkalingapuram Devangar Varthaga Sangam & another* -{2008-4-L.W.322}.

25. Therefore, we are of the considered view that Section 14-A of Act 26 of 1948 cannot be pressed into service by the writ petitioner. The writ petition lacks merits as well as bona fide. What the Panchayat Board could not achieve directly, they could not achieve by setting-up a person to file a public interest litigation.

26. In view of the above, the writ petition is dismissed. No order as to costs. Connected miscellaneous petition is also dismissed.