(1956) 02 MAD CK 0058

In the Madras High Court

Case No : W. P. No. 970 of 1953

S. Raman chettiar APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 27-02-1956

Acts Referred:

Citation : (1956) ILR (Mad) 1233

Hon'ble Judges : Rajagopalan, J;Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : R. Kesava Aiyangar, for the Appellant;

Final Decision : Allowed

Judgement

Rajagopalan, J.—Nelliyadikkadu village in Pattukottai taluk, Tanjore District, was notified as an estate to which the provisions of the

Madras Estates Land (Reduction of Rent) Act, XXX of 1947, would apply; and it was followed up on 6th May 1953 by a notification issued

under S. 3of the Madras Estates (Abolition and Conversion into Ryotwari) Act XXVI of 1948. Under the latter notification the estate vested in the

Government on 27th May 1953, on which date the Government took over the village. The petitioner was the owner of that estate. He held large

extents of private lands in that estate. On 21st October 1953 the petitioner was served with a notice of demand, which showed that he was in

arrears to the extent of Rs. 4585-8-0 payable by him as arrears of land revenue for fasli 1362. The notice specified 10th April 1953 as the date on

which the payment fell due. It should be remembered that the notification under S. 3of Act XXVI of 1948 was later in point of time; the notified

date itself was 27th May 1953. The petitioner applied under Art. 226 of the

Constitution for the issue of a writ of mandamus or any other

appropriate writ to restrain the respondent from collecting the amount of Rs. 4585-8-0 demanded of the petitioner by the notice dated 21st

October 1953.

2. It was common ground that this amount of Rs. 4585-8 0 demanded as revenue that had accrued to the Government in fasli 1362 included (1)

the land revenue payable under S. 23 (b) of Act XXVI of 1948 on what were the private lands of the petitioner, and (2) the charges payable

under the Irrigation Ceses Act Vol. 69-57 for the irrigation of some of those lands in fasli 1362. Both the petitioner and the respondent

Government agreed that the liability of the petitioner, if any, under the Irrigation Cess Act need not be decided in these proceedings.

3. The plea of the petitioner was that since the estate vested in the Government on 27th May 1953, towards the close of the fasli year 1362,

nothing was payable by the petitioner as land revenue for fasli 1362. In any event, the learned Counsel for the petitioner contended, the notice of

demand served upon the petitioner on 21st October 1953 was in correct when it specified 10th April 1953 as the date on which the land revenue

fell due. That was anterior to the date on which the estate vested in the Government under S. 3of Act XXVI of 1948. That the claim that the land

revenue fell due on 10th April 1953 was incorrect was not disputed by the learned Advocate General. In the normal circumstances that itself

should suffice to set aside the notice of demand by the issue of a writ of certiorari. Further coercive proceedings could not have been taken validly

under the Revenue Recovery Act on a notice of demand which contained so material an error.

4. The question is, when did the petitioner become liable to pay land revenue on what were his private lands in an estate taken over by the

Government under the provisions of Act XXVI of 1948? Since the estate in question was an in am estate, it was under S. 13that the petitioner, as

the quondam owner of the abolished in am estate, became entitled to a ryotwari patta in respect of his private lands. S. 13expressly says that it is

with effect on and from the notified date that the landholder becomes entitled to a ryotwari patta. The notified date in the case of the petitioner''s

estate was 27th May 1953. S. 16 (1) runs:

Every person, whether a landholder or a ryot who becomes entitled to a ryotwari patta under this Act in respect of any land shall, with effect on

and from the notified date, be liable to pay to the Government such assessment, as may be lawfully imposed on the land.

5. Thus under S. 13the right of the petitioner to a ryotwari patta for the private lands in question accrued to him on 27th May, 1953, the notified

date. Under S. 16 (1) the liability to pay the land revenue, the assessment on the lands he was entitled to hold on and after 27th May, 1953 on a

ryotwari patta accrued also on the same date, 27th May, 1953. It could not have accrued on any earlier date.

6. It should be remembered that normally the land revenue on lands which a person is entitled to hold on a ryotwari patta is payable for the fasli

year. In the case of the petitioner it was the land revenue for the fasli year 1362 that was demanded of him. His liability to pay the land revenue

arose only on. 27th May, 1953 under the terms of S. 16of Act XXVI of 1948. Whether that liability was to pay the whole of the land revenue for

Fasli 1362 or only a portion thereof is the next question. The petitioner''s contention was that the due dates for the payment in instalments of the

land revenue for Fasli 1362 having expired before the notified date 27th May, 1953. nothing was payable by the petitioner as land revenue for

Fasli 1362. In our opinion, neither of the extreme contentions, that nothing was payable at all and that the whole of the amount is payable, is

tenable.

7. No doubt, under S. 57of the Act, the liability of the petitioner to pay jodi on the in am estates of Nelliyadikkadu ceased at the end of Fasli

1361, though the notified date was late in Fasli 1362. That, of course, cannot determine the question at issue, what is the extent of the liability of

the petitioner to pay land revenue on lands to which he is entitled for a ryotwari patta under S. 13of the Act. That, it should be remembered, is a

fresh liability created by Act XXVI of 1948, and the extent of that liability cannot be determined by the provisions for the extinction of another

liability, the liability to pay jodi when the village was still an in am estate.

Section 31 of the Act makes it clear that the land revenue which the petitioner would have to pay on what were his private lands would not be

taken into account in assessing the compensation payable to the petitioner for the loss of his estate under Act XXVI of 1948. S. 31is a statutory

right, independent of the statutory right for which S. 13provides, and the liability under S. 16to pay land revenue has to be correlated to the right

created by S. 13of the Act. S. 16of the Act imposes a liability to pay land revenue to the Government both on the land holder and the ryot of an

estate who, under the terms of Act XXVI of 1948, is entitled to a ryotwari patta. S. 22provides for the final ascertainment of land revenue payable

on lands held on ryotwari pattas. The ascertainment for which S. 22provides was bound to come long after the notified date, after the survey and

settlement operations had been concluded. S. 23provides for the determination of the liability during the period between the notified date and the

ascertainment of land revenue under S. 22of the Act. The rates at which the land revenue is to be payable during that interim period have to be

determined under S. 23of the Act. S. 23 (a) deals with lands held for the purpose of agriculture not being private lands. The lands in question of

the petitioner being private lands, the rates have to be determined under S. 23 (b) of the Act. It is significant that, while the two provisos to S. 23

(a) control the liability of the person whose case falls within S. 23 (a), no such proviso has been added to S. 23 (b) of the Act. The proviso to S.

23 (a) refers to the land revenue in respect of the fasli year in which the estate is notified.

8. Thus, beyond S. 16, there is no specific provision in the Act to determine the extent of the liability of a landholder entitled to a ryotwari patta for

his private lands under S. 13of the Act. The right to the ryotwari patta accrued in this case on 27th May, 1953. The liability to pay land revenue

arose on that date under S. 16of the Act. It is only with reference to S. 16that the extent of the liability is to be determined. In the absence of any

specific statutory provision, the liability created by S. 16of the Act cannot be extended backwards beyond the notified date, 27th May 1953.

Though land revenue is payable for a fasli year, the liability to pay land revenue having arisen in the case of the petitioner only on 27th May 1953,

the Government would not be entitled to claim any land revenue for the period 1st July 1952 to 27th May 1953. The liability having accrued in the

course of the fasli year, on 27th May 1953, the only legal basis to enforce the liability created by S. 16of the Act would appear to be to apportion the liability to pay land revenue on a time basis. The kistbandi regulating the dates on which the instalments of the land revenue for fasli 1362 fell

due in the ryotwari tracts in that area may not be a relevant factor in determining the extent of the liability created by S. 16of the Act. Since under

S. 16of the Act the liability arose on 27th May 1953, the petitioner is liable to pay the land revenue for the period between 27th May 1953 and

30th June 1953, on which later date fasli 1362 ended. As we said, in the absence of any specific statutory provision, apportionment on time basis

would appear to be the only legal method that could be adopted to work out the rights of the Government and the liability of the petitioner under S.

16of the Act.

9. Since the notice of demand served upon the petitioner claimed from him a much larger sum than was lawfully due from him, that should be

another ground on which the notice of demand should be set aside. A writ of certiorari will issue to set aside the notice of demand dated 21st

October 1953 and other proceedings under the Revenue Recovery Act taken on the basis of that notice. This petition is allowed. No costs.