
(1959) 09 MAD CK 0009
In the Madras High Court

S.A.M. Mahamed Ibrahim and Another APPELLANT
Vs
The Estates Abolition Tribunal RESPONDENT

Date of Decision : 08-09-1959

Acts Referred:

Penal Code, 1860 (IPC) — Section 15, 67

Citation : (1960) ILR (Mad) 282 : (1960) 73 LW 766 : (1960) 73 LW 220 :
(1960) 1 MLJ 347

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

Judgement

Rajagopala Ayyangar, J.—This is a petition for the issue of a writ of mandamus directing the Estates Abolition Tribunal to entertain Appeal

No. 136 of 1957 and dispose of it in accordance with law.

2. A few facts are necessary to be stated to understand how a relief of this nature comes to be claimed. The village of Eripurakarai in Pattukottai

taluk, Tanjore District, was notified as an inam estate and taken over by the Government under Madras Act (XXVI of 1948) on 1st October,

1951. The petitioners who are the ex-inamdars of this village filed an application on 23rd December, 1955, before the Additional Assistant

Settlement Officer, Pattukottai, claiming ryotwari pattas u/s 13(a)(i) of the Act in respect of 8 items. The petitioners are two in number and it is

stated that they were carrying on business in Ceylon while their family has been permanently residing in Adirampattinam near Pattukottai. The

Assistant Settlement Officer took up the petitioner's application for enquiry on 26th April, 1956 and pronounced an order disallowing the

petitioner's claim on nth July, 1956.

3. In this order he states:

The prescribed notice has not been served on both the petitioners as they are reported to be in Ceylon and published in the village in time and

according to rules. In response to the notice none has come forward to oppose the claim of the petitioners. The first petitioner's brother-in-law is

reported to be in the village supervising the lands of the petitioners but inspite of best attempts to have the notice served on him it could not be

done as his presence could not be secured by the Karnam.

It was thus an ex parte enquiry that was held, that is in the absence of the applicant and in the absence of any evidence led by him.

4. It is stated in the affidavit in support of this petition that though the families of the petitioners were residing in Adirampattinam, at an address well

known to the Karnam, no steps were taken to inform the members of their families or give them a copy of the notice of the hearing. Allegations are

made in the affidavit regarding the inimical relationship between the petitioners and the Karnam as the reason why no notice was served upon them

and the statement made regarding the impossibility of serving notice upon the members of the petitioners' families.

5. The order of the Assistant Settlement Officer disallowing the claim of the petitioners was on nth July, 1956. At this date, it is said, the petitioners

were in Ceylon. No copy of the order was served upon the petitioners or sent to them by registered post. Rule 6 framed u/s 67 read with Section

15 of the Act enjoins upon the Settlement Officer the obligation to deliver or serve a copy of his order on the petitioner and each respondent. Rule

6(b) runs:

A copy of the decision in full shall be delivered to the landholder if he is present or sent to him free of costs by registered post acknowledgment

due sent to the manager of the estate.

This was not done.

6. It is said in the affidavit that the petitioners came to know of the disposal of their application only in May, 1957, when one of the petitioners

returned to India, and that immediately thereafter he applied for a copy of the order and filed an appeal before the Estates Abolition Tribunal on

4th June, 1957, with a petition for condoning the delay, if any, in preferring the appeal. The Tribunal, however, dismissed the appeal as barred by

limitation, having also dismissed the application for excusing the delay.

7. It is the legality of this order of the Estates Abolition Tribunal that is challenged in this petition.

8. Now the first question for consideration is whether the Tribunal was justified in rejecting the appeal of the petitioners on the ground that it was

barred by limitation. The Tribunal took no account of the fact that the Assistant Settlement Officer had failed to conform to the requirements of

Rule 6(b) which I have set out earlier under which he was directed to serve a copy of the order upon the landholder or to send him the same by

registered post if the same could not be delivered to him personally. Section 15(2) of the Act, which provides for appeals to the Tribunal against

the orders of the Assistant Settlement Officers enacts:

Against the decision of the Settlement Officer under Sub-section (i) any person aggrieved by such decision may, within two months from the said

date, appeal to the Tribunal, provided that the Tribunal may in its discretion allow further time not exceeding 6 months for the filing of any such

appeal.

The interpretation that the Tribunal placed upon this provision was that their power to excuse delay in the filing of the appeal was limited to those

cases where the delay did not exceed 6 months from the date of the order. It is no doubt so. But this is dependent on the terms of the statute and

the rules being complied with as regards the manner of service of the order appealed against. In my judgment where there has been a failure to

obey the statutory direction, it would not be consonant with principle to hold that a person could be affected by an order of which he had no notice

delivered on him in the manner provided by statute. This might be tested by taking an extreme case where the Settlement Officer passes an order

but he keeps it with himself and does not communicate it to any of the parties mentioned in Rule 6(b). In such a case it could not be contended that

the right either of the Government or of an aggrieved person should be barred because the date which the order bears is more than 6 months from

the date of the filing of the appeal. On a proper construction of Rule 6(b) I am inclined to hold that the order would become an operative order

which would become final in the absence of an appeal only when served upon the parties named in Rule 6(b). In this view I hold that the Tribunal

was not justified in rejecting the appeal of the petitioners and they committed an error in doing so.

9. The order of the Tribunal dismissing the appeal, A.S. No. 136 of 1957, is set aside, and the rule is made absolute. The Tribunal will restore the

appeal to its file and dispose of it in accordance with law. As there has been no enquiry by the Assistant Settlement Officer in the presence of the

landholders and as it would be necessary that they should be given an opportunity to adduce such evidence as they choose, to establish their claim

to patta, the Tribunal is directed to remand the proceeding to the Assistant Settlement Officer for an enquiry and decision. There will be no order

as to costs.