
(1952) 07 MAD CK 0001
In the Madras High Court
Case No : Writ Petition No. 468 of 1952

Sethuraja Gounder

APPELLANT

Vs

Board of Revenue and Another

RESPONDENT

Date of Decision : 31-07-1952

Acts Referred:

Constitution of India, 1950 — Article 226

Limitation Act, 1908 — Section 5

Madras Hereditary Village Offices Act, 1895 — Section 10, 14

Citation : AIR 1953 Mad 972 : (1953) 66 LW 700 : (1953) 2 MLJ 644

Hon'ble Judges : Subba Rao, J

Bench : Single Bench

Advocate : T.S. Vaidyanath Aiyar, V.P. Sarathi, for Govt. Pleader, for the Appellant; S. Venkatakrishnan and K. Arunachala Sastri, for the Respondent

Judgement

Subba Rao, J.—This is an application for issuing a writ of certiorari to quash the order of the Board of Revenue dated 28-4-1952. One

Kalappa Gounder was the last "Miras" Headman of Kilaveneri village, Thirumangalam taluk, Mathurai district. He resigned his post on 16-10-

1945. The petitioner, the grandson of the said Gounder and who was alleged to be the adopted son of the said Kalappa Gounder, was registered

to the office. In regard to the question whether the petitioner was the adopted son of Kalappa Gounder, there was litigation which finally ended in

the High Court. The High Court held that he was not the adopted son of Kalappa Gounder. Respondent 2, who is a minor, filed a regulation suit

No. 1 of 1950 claiming himself to be next heir of Kalappa Gounder and for his being registered as Headman. On 20-4-1951, the Revenue

Divisional Officer set aside the order registering the petitioner and passed orders that respondent 2 should be registered in his place.

The petitioner preferred an appeal to the Collector of Mathurai. The Collector allowed the appeal holding that the suit filed by respondent 2 was time barred as the cause of action arose on 31-12-1945, when the petitioner was registered as headman and as the suit was not filed within three years from that date. Against the order of the Collector, respondent 2 preferred an appeal to the Board of Revenue. The Board of Revenue set aside the order of the Collector and restored that of the Revenue Divisional Officer) and held that the delay in filing the suit must be deemed to have been excused u/s 5, Limitation Act. The petitioner filed the aforesaid writ for quashing that order.

2. Learned counsel for the petitioner contended that the judgment of the Board of Revenue is vitiated by an error apparent on the face of the record. A perusal of the judgment shows that the Revenue Board assumed that Section 5, Limitation Act would apply and therefore the delay in filing the suit could be excused. It is not contended that Section 5, Limitation Act applies. Indeed, it is conceded that Section 5, Limitation Act has no application for excusing delay in filing a suit u/s 14, Madras Hereditary Village Offices Act.

3. In the circumstances I must hold that there is an error on the face of the record. The Revenue Board applied a provision) which admittedly has no application.

4. Realising this difficulty learned counsel appearing for the respondent 2 attempted to sustain the order of the Revenue Board on the following three grounds. (1) The petitioner has no personal and present interest and therefore cannot maintain the application. (2) This Court has no jurisdiction to issue a writ of "certiorari" under Article 226 of the Constitution of India in respect of an order made under the Madras Hereditary Village Offices Act. (3) The act of the Revenue Board is not a judicial act.

5. The first contention was based upon a judgment of Rajamannar C. J. and Venkatarama Aiyar J. in -- In Re: P. Ramamoorthi, There, the petitioner, who is a member of the Legislative Assembly, applied for quashing the order of the Governor in nominating another person to the Madras Legislative Council. The learned Judges, after citing relevant authoritative decisions given on the subject in America and England, came to the conclusion that it was fundamental that in an application for writ of certiorari,

the petitioner must establish his personal and present right. I am bound by the decision. But, in my view, that decision has no relevancy to the question to be decided in this case.

The facts in this case are: The petitioner was registered as a headman u/s 10. Madras Hereditary Village Offices Act. Respondent 2 filed a suit to set aside that order and to get himself registered in his place. He Succeeded before the first tribunal, but failed before the second tribunal. The Revenue Board restored the order of the first tribunal. The result is that respondent 2 was directed to be registered in the place of the petitioner.

On these facts, it is impossible to say that the petitioner has no personal interest in the matter within the meaning of the aforesaid judgment. The mere fact that in collateral proceedings he was held to be not the adopted son of his deceased maternal grandfather would not really affect the question to be decided.

6. I cannot agree with his second contention either. Learned counsel's argument is that under Article 225 of the Constitution of India, the jurisdiction of, and the law administered in, any existing High Court, shall be the same as immediately before the commencement of the

Constitution, and as under the Madras Hereditary Village Offices Act, the jurisdiction of the civil Court in respect of the subject matter in question

is barred, the High Court under Article 226 cannot question the order of the Revenue Board. A similar question was raised before a Bench of this

Court, of, which I was a member, in regard to a legislation that was made subsequent to the Constitution and was repelled by us. In -- N.P.

Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, (B), the following observations of mine are found at page 782: ""The

content of the power now conferred under Article 226 is different and more extensive than the limited power exercised before. This extraordinary

jurisdiction, which, I may, for convenience, call power to issue constitutional writs is not dealt with by Article 225.

It cannot be treated as part of the jurisdiction of the law administered in any existing High Court, for if so held, it may mean that in the case of

Courts, which had no power to issue a writ previously, fresh power had been given and in the case of Courts, which had some power previously, it

was an extension of that power. It is, therefore, a new power conferred on the

High Courts to be exercised subject to the territorial jurisdiction. It is not a power which is an appendage only to the subject matter dealt with under Article 225. That the High Court has territorial jurisdiction over the entire State within which it is situated, is also clear from the provisions of Article 227. It says that every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The only tribunals which are excluded from its superintendence are Courts or tribunals constituted by or under any law relating to armed forces.

Article 225 is subject to the provisions of the Constitution and therefore subject to the provisions of Articles 226 and 227. The construction suggested by the learned counsel for the respondents would make Article 226 subject to Article 225 which the framers of the Constitution did not purport to do. The total Quantum of power of the Parliament to enact laws is dealt with in Article 245 and distribution in Article 246. Article 245 clearly says that the power of the Parliament to make any laws for the whole or any part of the territory of India is subject to the provision's of the Constitution and is, therefore, subject to the provisions of Articles 226 and 227. The Parliament cannot, therefore, make a law in derogation of the provisions of Article 226.

7. Later on I observed:

It is, therefore, clear that the power confined to the territorial jurisdiction of the High Court cannot be taken away by the Parliament by enacting laws, removing a particular subject matter from the jurisdiction of the High Court. So long as the territorial jurisdiction subsists, its unlimited power lasts.

Venkatarama Ayyar J. also agreed with me.

Following that judgment, I reject the contention of the learned counsel.

8. In my view, there are no merits either in the third point. The argument is that the order of the Revenue Board in second appeal is not a judicial act. The connotation of the word, "judicial" has been laid down in innumerable decisions. Two of the important tests are: (1) whether the order affects the rights of a party and, (2) whether there is a duty on the part of the tribunal to dispose of the case judicially. Applying these two tests, I

find it very difficult to say that the order of the Revenue Board is not a judicial act. Respondent 2 filed a suit u/s 13, Madras Hereditary Village

Offices Act for getting himself registered as a headman.

Under the Act there are a hierarchy of tribunals. There is an appeal from the Revenue Divisional Officer to the Collector and from him to the

Revenue Board. The Act also prescribes a period of limitation. The procedure for disposing of the suit is similar to that in other suits. Oral and

documentary evidence could be adduced. The tribunal, on considering the evidence, comes to the conclusion whether the plaintiff has established

his right. This decision is subject to appeal and second appeal. It is therefore clear that the Revenue Board is bound to follow judicial procedure

and its decision affects the right of parties. I must, therefore, hold that the order of the Revenue Board is a judicial act liable to be quashed in

appropriate cases.

9. It is then contended by learned counsel that though it is not possible for him to sustain the judgment of the Revenue Board on the ground given

by them, he could sustain it on a different ground. He argues that the suit was filed within three years from the date when the cause of action

accrued and the date of the cause of action is the date when the High Court finally held that the petitioner was not the adopted son. I do not

propose to express my opinion on this question. It should not be understood that I have decided this point even impliedly.

10. The order of the Revenue Board is hereby quashed and the Board is directed to dispose of the appeal in accordance with law. Respondent 2

will pay the costs of the petitioner.