
(1995) 01 MAD CK 0030
In the Madras High Court

Sri Soundararaja Perumal Devasthanam APPELLANT
Vs
Smt. Ravikannu Ammal and Others RESPONDENT

Date of Decision : 05-01-1995

Acts Referred:

Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act, 1971 — Section 4

Citation : (1995) 2 LW 629 : (1995) 1 MLJ 465 : (1995) WritLR 672

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—It is very unfortunate that the officials constituted under the Tamil Nadu Occupants of Kudiyruppu Act, 1971 have ignored

the basic principles of the Act and proceeded to grant patta in favour of the first respondent in each of these writ petitions. The facts" relevant are

shortly as follows: The lands involved in these writ petitions are house sites belonging to the petitioner and they formed part of minor inams. After

passing of Tamil Nadu Act 30 of 1963, the Settlement Officer granted patta in favour of the temple, the petitioner. That was challenged by the first

respondent in each of the writ petitions before the tribunal and they failed therein. Thus, the title of the temple to the property was confirmed by the

grant of patta under the Tamil Nadu Act 30 of 1963.

2. Thereafter, the first respondent in these petitions filed applications before the Authorised Officer for Kudiyruppu and Additional Tahsildar,

Nagapattinam praying for issue of patta u/s 4 of the said Act. Their case is that they have been in possession of the lands for several decades prior

to 17.1.1971 and that they are agricultural labourers and agriculturists contributing their own physical exertions skill and labour. The first officer

viz., the Additional Tahsildar simply took note of the fact that the petitioners were in possession prior to 1971 and proceeded pass an order in their

favour thinking that nothing else remained to be considered. On appeal, the Appellate Authority, viz., the Sub Collector, Nagapattinam considered

the question whether the petitioners were agriculturists or agricultural labourers and relying on the evidence of Manickavasagam examined as

P.W.2 held that they were agricultural labourers. The case put forward by the petitioners that they were working elsewhere and not agricultural

labourers was rejected. He confirmed the order of the first officer.

3. Neither of the officers has chosen to consider whether the land in question is a Kudiyiruppu as defined by the Act. Section 2(8) of the Act reads

as follows:

Kudiyiruppu"" means the site of any dwelling house or but occupied, either as tenant or as licensee, by any agriculturist or agricultural labourer and

includes such other area adjacent to the dwelling house or but as may be necessary for the convenient enjoyment of such dwelling house or hut.

Explanation I: It shall be presumed that any person occupying the Kudiyiruppu is an agricultural labourer or an agriculturist, until the contrary is

proved:

Explanation II: In determining the question whether for the purpose of Clause (8), any area adjacent to the dwelling house or hut is necessary for

the convenient enjoyment of such dwelling house or but,

(i) the area which the agriculturist or agricultural labourer had been enjoying immediately before the 19th June, 1971, and

(ii) such other factors as may be prescribed, shall be taken into account.

4. Hence, the very first requirement for labelling the land as Kudiyiruppu is that it should be a site occupied either as a tenant or as licensee by any

agriculturist or agricultural labourer. In this case, it is admitted by the first respondent in each of the writ petitions who were the applicants before

the authorities that they were neither tenants nor licensees. The first respondent in W.P. No. 10563 of 1981 is the eldest member of the family. The

first respondent"" in W.P. No. 10562 of 1981 is his son and the first respondent in W.P. No. 10561 of 1981 is his brother's wife. The first

respondent in W.P. No. 10563 of 1981 has stated as follows:

(There is no connection between the temple and this. There was no agreement for tenancy or ""Paguthi"" with the temple. There is no permission by the temple and this. There was agreement for tenancy or ""Paguthi"" with the temple. There is no permission by the temple authorities).

5. That is sufficient to show that the definition of Kudiyiruppu is not satisfied. Even if the occupant has been there for hundreds of years, the site would not become a Kudiyiruppu within the meaning of the Act unless he is there as a tenant or licensee.

6. Similar admissions are made by the first respondent in each of the other writ petitions. The first respondent in W.P. No. 10562 of 1971 says

that he is not occupying the land as ""Pagudhidhar"" or on permission of the temple. The first respondent in W.P. No. 10561 of 1971 does not say

anywhere that she is occupying the site as a tenant or licensee. In fact, the case of those persons is that they came to know of the ownership of the

temple only in 1972. In those circumstances, there can be no doubt whatever that the land in question is not a Kudiyiruppu. Consequently, the

authorities have no jurisdiction to grant patta under the provisions of the Act with respect to the said land. It follows therefore that the orders of the

authorities are unsustainable and deserve to be quashed.

7. In the result, the writ petitions are allowed. The orders passed by respondents 2 and 3 in each of the petitions are quashed. The applications

filed by the first respondent in each of the writ petitions before the authorities is dismissed. There will be no order as to costs.