

Supreme Court of India

Deputy Salt Commissioner, Madras vs Muthukumaraswamy Mudaliar And ... on 1 February, 1990

Equivalent citations: JT 1990 (1) SC 130, 1990 (1) SCALE 92, 1990 Supp (1) SCC 14, 1990 (2) UJ 336 SC

Author: L M Sharma

Bench: L Sharma, T Thommen

JUDGMENT Lalit Mohan Sharma, J.

1. This appeal by special leave is directed against the decision of two Judges of the Madras High Court forming Special Appellate Tribunal under Section 30 of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Act XXX of 1963). The dispute relates to the nature of a vast area of land, fully detailed in the records of the present case, and the claim of the respondents thereto.

2 After holding a suo motu inquiry under Section 11 of the Act XXX of 1963 the Assistant Settlement Officer, Villupuram, held by his order dated 6.5.1983 that the present respondents were entitled to get a ryotwari patta under Section 8(1) of the said Act. The appellant, Deputy Salt Commissioner, filed an appeal on behalf of the Government of India against this order under Section 11(3) of the Act, which was dismissed on 20.12.1983 by the Minor Inams Tribunal (sub-court, Chinglepet). A further appeal under Section 30 was also dismissed by the impugned judgment.

3. The disputed land was recorded in the survey papers under Survey No. 918 (revised Survey No. 918/2) as Salt Pan Paramboke and it appears that the respondents challenged the same as erroneous by a letter dated 13.10.1973 addressed to the Director of Settlement, Madras. The Settlement Officer, Thanzavur, passed an order dated 13.10.1982 holding that the entry Salt Pan Paramboke was wrongly made. It has been pointed out by the learned counsel for the appellant that although the concerned estate wherein the disputed land is included was notified and taken over by the Government in 1952 under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Act XXVI of 1948) the order was passed belatedly after three decades. Besides, questioning the power of the Settlement Officer, it is also urged that the said order having been passed without impleading the appellant or the State Government is non-est in the eye of law and is fit to be completely ignored; and the impugned order should be set aside because strong reliance has been placed therein, on the said order.

4. In passing the impugned order dated 6.5.1983 the Assistant Settlement Officer, Villupuram, purported to act suo motu under the Act XXX of 1963. The appellant, Deputy Salt Commissioner, was made a party in the proceeding, who inter alia pleaded that the respondents' application for grant of patta was grossly belated and on the merits they do not have any right, title or interest in the land in question. The land which is Salt Pan Paramboke had been taken over by the Government of India, and the respondents can enjoy the land only after obtaining an appropriate permission from the Government of India. With respect to similar lands situated in the neighbourhood, it was said that they have got the required order in their favour, but, in regard to the disputed area they are avoiding to execute an agreement with the Salt Department with respect to major portion of the Survey No. 918, after taking a lease only for a part thereto. On the merits of their respective claims

both parties filed some documents. While rejecting the argument based on delay, the Assistant Settlement Officer observed that the proceeding before him was by way of suo motu inquiry. Dealing with the claim on merits the Assistant Settlement Officer relied upon the Settlement officer's order dated 13.10.1982 holding that the land was 'minor inam'. The Appellate Tribunal affirmed the findings and while strongly relying on the aforesaid order dated 13.10.1982, further observed that the appellant should have challenged the said order by appeal; or, if it be assumed that since he was not a party in the proceeding an appeal was not maintainable, he should have questioned the order 'either by a suit or any other proceeding', and since this was not done, the appellant could not be permitted to claim that the disputed land was not 'minor inam' or that the Assistant Settlement Officer's order was illegal, The Tribunal rejected the appellant's claim that the land was Paramboke in view of the change in the Survey entry No. 918 and further proceeded to observed that the documents relied upon did not prove the appellant's claim.

5. The matter was, thereafter, taken to the Madras High Court (Special Appellate Tribunal formed under Section 30 of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Act XXX of 1963), where the parties reiterated their respective stands. The High Court generally agreed with the Assistant Settlement Officer and the Appellate Tribunal and confirmed their orders. It was emphasised once more that the records produced by the appellant, Deputy Salt Commissioner, did not establish the Central Government's claim as pleaded. Several serious questions of law raised on behalf of the appellant before the authorities, as well as, the High Court were, however, not taken up and considered seriously. It was inter alia urged that:

a) The entry description of the land as Paramboke having been made a long time back in the Resettlement Register and the respondents having failed to make a claim within the prescribed period were not entitled to move the authorities in 1973 and the order of the Settlement Officer dated 13.10.1982 was wholly uncalled for,

b) the application of the respondents for grant of patta under the Act XXX of 1963 was barred by rule of limitation;

c) if the land was and is really Paramboke the respondents can not have any manner of claim thereto;

d) the respondents have been, in the past, collecting salt after obtaining the required permission from the appropriate authorities and their belated attempt to grab part of the Salt Pan, which is the subject matter of the present case, by denying the rights of both, the State Government and the Central Government, should not succeed;

e) the mere user of possession of the lands by the respondents can not determine the rights of the parties; it is essential to examine the length of time and extent and nature of such possession; and

f) the order dated 13.10.1982 purporting to correct the Paramboke entry can not be relied upon against either the appellant who represents the Central Government or the State Government as neither of the two Governments were impleaded as party in the proceeding.

The grievance appears to be well-founded. The impugned judgment indicates that the questions were not considered with seriousness they deserved.

6. The learned counsel for the appellant has contended that the order dated 13.10.1982 in regard to the correction of the entry of Paramboke is wholly without jurisdiction for more reasons than one. As the said order has been strongly relied upon by the authorities, it becomes necessary to examine its validity. Although, the order states that it was passed in suo motu exercise of the powers conferred under Section 67(3) read with Section 11 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter referred to as the 1948 Abolition Act) the order was, according to the appellant, actually passed on the application of the respondents dated 13.10.1973 addressed to the Director of Settlement, Madras, wherein he had prayed for a direction to the Assistant Settlement Officer for inquiry and order under the Act of 1963.

7. Under the provisions of the 1948 Abolition Act of the entire estate including all communal lands, Paramboke, et cetera are transferred to the State Government and vested in it free from all encumbrances with effect from the date of the notification, which in the present case was 17.3.1952. According to the appellant the land which was Paramboke, vested in the State of Tamil Nadu and before any action by way of correction of the entry could be taken it was necessary to serve a notice on the appellant and the State of Tamil Nadu, and as this was not done the proceeding was vitiated in law. The learned counsel for the appellant further relied before us on certain documents in support of the claim of the Central Government, which were not earlier filed in the present proceeding. He referred to the provisions of the Madras Salt Act, 1889, wherein 'salt factory' has been defined under Section 3(i) as including the land on which salt is made and contended that the respondents have been obtaining in the past the necessary permission from the Central Government for making salt. The learned counsel, thus, made a serious effort to establish before us the right of the Central Government in the disputed land, but, in view of the stand taken by the learned counsel for the respondents before us and in view of the fact that the documents on which the learned counsel for the appellant wants to rely are being produced before this Court for the first time, we do not think it will be possible to decide this question finally at this stage.

8. Developing his argument the learned counsel for the appellant placed reliance on Section 3(b) of the 1948 Abolition Act which reads as follows:

3. With effect on and from the notified date and save as otherwise expressly provided in this Act-

(a)....

(b) the entire estate (including all communal lands; Paramboke; other non-ryoti lands; waste lands; pasture lands; lanka lands; forests; mines and minerals; quarries; rivers and streams; including private tanks and boranies) and irrigation works; fisheries and ferries, shall stand transferred to the Government and vest in them, free of all encumbrances and the Tamil Nadu Revenue Recovery Act, 1864, the Tamil Nadu Irrigation Cess Act, 1865, and all other enactments applicable to ryotwari areas shall apply to the estate;

The argument is that if the land is really Paramboke, as it was registered, until modified on 13.10.1982, it must be held to have vested in the State Government in 1952. If the respondents' case of the land being inam is assumed to be correct they were entitled to a ryotwari patta in 1952 itself. They could not make such a claim belatedly in 1973 in view of the provisions of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, and the Madras Inam Estates (Abolition and Conversion into Ryotwari) Rules, 1965. Their conduct in remaining silent for such a long period also requires serious consideration while deciding their claim on merits. It was also argued that the necessary conditions in which the suo motu power can be exercised do not exist in the present case. There appears to be considerable force in the argument. If the State Government and the appellant had been served with notice before passing the order dated 13.10.1982 they could have placed their points of view before the authority. The fact that the entire exercise ending with the order dated 13.10.1982 was undertaken initially on the letter of the respondents dated 13.10.1973 addressed to the Director of Settlement, Madras, can not be ignored. However, we do not think that the matter can finally be closed at this stage.

9. Mr. Ramakrishna, the learned counsel for the respondents, while supporting the judgment under appeal, invited us to consider the merits of the claim of the respondents on the basis of the materials on the records of the case, as well as, several other documents, not filed earlier in the case, which he described as relevant and important. He contended that the respondents' claim of pre-settlement inam grant which was confirmed in 1864 must be accepted. The fact that the Inam Commissioner dealt with these Salt Pans is itself indicative of the fact that they are of pre-settlement days. He proceeded to say that an inam grant in the hands of a zamindar does not lose its character or tenure. In other words, the inamdar and the zamindar being the same person will not make any difference. The words 'estate' and 'inam' are of different nomenclatures and have different characteristics and, therefore, it makes no difference if the zamindar himself enjoys a pre-settlement inam grant. Consequently an inam will not be affected adversely by a notification under the 1948 Abolition Act. Inams have been dealt with by other enactments. Elaborating his point the learned counsel took us to the provisions of the Madras Permanent Settlement Regulation Act, 1802 (Act XXV of 1802) some other recent Acts and also to certain old decisions of the Madras High Court. It was strongly asserted that the land in question ought to be held not merely inam, but, minor inam and that it can never be treated as Paramboke. Further it was said that the description of any land by merely calling it as Paramboke does not establish the appellant's claim. Dealing with the provisions of the Madras Salt Act, 1889 it was argued that the provisions relied upon therein are referable only to private land, and a licence granted by the authorities for the manufacture of salt on a piece of land is quite different from the title of the land itself.

10 We casually examined some of the old documents which were not filed in the courts below and on which the learned counsel for the respondents wanted to rely, but, we did not proceed further as in our view the case deserves to be remanded for re-examination of the rival claims of the parties from the very beginning. In that view, we do not consider it advisable to discuss further the arguments of the learned advocates in support of the respective claims of the parties on merits. We, accordingly, allow the appeal and set aside the judgment of the High Court in S.T.A. No. 14 of 1986 as also the order of the Minor Inam Tribunal (sub-court, Chinglepet) and the Assistant Settlement Officer, Villupuram. So far as the order dated 13.10.1982 passed by the Settlement Officer, Thanzavur, is

concerned, the same is not fit to be taken into consideration at all while deciding the present dispute, but, as the respondents heavily relied on the corrected entry supporting their case, we in the interest of the justice think that the prayer of the respondents should be re-considered after hearing the necessary parties. We, accordingly, direct that the matter will be re- examined by the Settlement Officer after adding the State Government, the appellant, and the respondents as parties and after ignoring his earlier order dated 13.10.1982. The Assistant Settlement Officer, Villupuram, may await the Settlement Officer, Thanzavur's orders. It is made clear that none of the observations made in the present judgment shall be deemed to have decided any issue of fact or law and the parties are at liberty to adduce further evidence and to press their claims and make all the arguments which are available to them before the authorities. The cost in the proceeding shall abide the final decision in the litigation.