

Sathyakumar Estates (P) Ltd. Vs. the Assistant Settlement Officer and ors.

Sathyakumar Estates (P) Ltd. Vs. the Assistant Settlement Officer and ors.

SooperKanoon Citation : sooperkanoon.com/806294

Court : Chennai

Decided On : Jul-12-1989

Reported in : (1989)2MLJ295

Appellant : Sathyakumar Estates (P) Ltd.

Respondent : The Assistant Settlement Officer and ors.

Judgement :

Mohan, Officiating C.J.

1. This is rather an unfortunate case in which for no fault of the writ petitioner, the third respondent herein, he has been driven from pillar to post. All that the third respondent wanted was a notice before the proceedings under the Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 - Tamil Nadu Act 24 of 1969 were finalised.

2. The short facts of the case are as under:-As early as in 1840 one Padamittah Ookaran, the predecessor-in-title of the appellant came into possession of some of the lands connected with the lands in the Gudalur Janmam. There were certain court proceedings and ultimately in O.S. No. 113 of 1863 on the file of the principal SunderAmin of Calicut, the objection relating to the attachment of a portion of the estate was upheld, and Venkitasubha Iyer the successor-in-interest of Ookaran executed a deed of conveyance in April, 1871 in respect of 3/4th of his share of the property to one C.Rangacharyalu. Subsequent to this conveyance,

Venkitasubha Iyer died in 1872 and his son K.Seshadri Iyer became entitled to the remaining 1/4th share in the property. After the death of Venkitasubba Iyer, in 1922 the heirs of Rangacharyalu and Seshadri Iyer formed the present Sathyakumar Estate (P)Ltd.,the appellant herein.

3. In 1945, Nilambur Kovilagam, Nilambur filed a suit for declaration in O.S. No. 38 of 1945 on the file of the court of the Subordinate Judge of Kozhikode. The suit was for declaration of title and possession of a tract of unsurveyed forest land and for consequential prayer for injunction. The appellants herein resisted the suit and contended that the Janmi had no title to the suit properties and the Janmi's title, if any, was lost by limitation by adverse possession. The trial court held that the Janmi had no title to the suit property, and even if the Janmi had title, that title was lost by adverse possession. The matter was taken up in appeal to the High Court and the High Court upheld the decision of the trial court. Finally the matter went up to the Supreme Court. The Supreme Court in C.A. No. 565 of 1964 by judgment dated 25.8.1966 dismissed the appeal and upheld the findings of the trial court on all the issues.

4. It requires to be stated here that the property involved in the litigation, as we have said above, is a track of unsurveyed forest land in Nilambur Amsom, Ernad Taluk, now in Kerala State. This we are obliged to state at this stage because there is some dispute as to whether the rights of the appellant had come to be concluded by the judgment of the Supreme Court. With this we pass on to the proceedings under Tamil Nadu Act 24 of 1969.

5. After the judgment of the Supreme Court stated above, the appellant herein in 1973 made an application to the Tahsildar, Gudalur for the grant of janmi patta. On 20-7-1973 notice was issued to M/s. Manjushree Plantations Ltd., the third respondent herein. The third respondent herein on 28.7.1973 made a request for adjournment. Again on 3.8.1973 and 25.8.1973 the third respondent sought adjournment. Again on 27.8.1973, 13.9.1973, 15.9.1973 and 15.10.1973, the enquiry was adjourned at the request of the third respondent. Ultimately, by the proceedings of the Collector of Nilgiris dated 31.12.1974, the Tahsildar was directed to take action and include the name of the appellant as Joint pattadar vide

the Collector's proceedings in K.Dis. No. 55239/74, dated 31.12.1974. This is in respect of S. No. 465/3A/1A/3 Patta No. 19 of O' Valley village, Gudalur taluk. Pursuant to this, on 29.2.1976 joint patta was issued and the third respondent, M/s. Manjushree Plantations Ltd., was shown as a tenant. It covered an extent of 12,162.32 acres.

6. While the matter stood thus, the appellant herein applied to the Assistant Settlement Officer, Gudalur for the issue of rytowari patta stating that these lands were not covered by Tamil Nadu Act 24 of 1969. The Director of Survey and Settlement issued instructions to the Assistant Settlement Officer to treat the case under Section 8 of Tamil Nadu Act 24 of 1963. Thereupon, the Assistant Settlement Officer by proceedings dated 27.7.1981 issued notice in Form No. 5 only to the appellant calling upon the appellant to appear for an enquiry in respect of R.S. No. 554/8 corresponding to old survey No. 46B/IA/IA/3. On the very same day, viz., 27.7.1981 notice in Form No. 6 was also issued to the public in respect of the above land. It was at this stage, the third respondent filed its objections on 4.9.1981 wherein a specific stand was taken that the third respondent was the lessee in possession inter alia of the entire extent in survey No. 46B/IA/IA/3 of O' Valley village measuring 12,351.27 acres. It was also stated therein that the present writ appellant had no manner of right over any portion of the land in the said survey number and therefore the appellant would not be entitled to patta. It was also stated that the third respondent herein had filed a suit in O.S. No. 22 of 1978 on the file of the District Munsif, Gudalur for a permanent injunction restraining the appellant herein from trespassing into the lands in S. No. 468/IA/IA/3 of O' Valley village and obtained a temporary injunction, and the suit is pending. More than all this, it was prayed specifically as follows:

Under the circumstances, we wish to place the above facts on record and we further request you that in case the said Sathiakumar Estates (P) Ltd. have made by applications for grant of patta in respect of any portion of the land in the above survey field, we should be given an opportunity to contest their claim and no orders should be passed without hearing us in the matter. We do hope the authorities concerned will take due note of the above facts and will not pass any orders under the above Act in respect of the lands in S. No. 46B/IA/IA/3 O' Valley

village without giving us notice of rival claims, if any, and without hearing us.

7. What had happened thereafter is crucial. By an order dated 4.2.1982 without hearing the third respondent and in spite of the Tahsildar, Gudalur pointing out the irregularity stating that notices of enquiry had not been issued by the Assistant Settlement Officer to other Janmi and tenants and as such the Assistant Settlement Officer had committed an irregularity, the Assistant Settlement Officer ultimately ordered that the lands in question must be treated as pre-existing ryotwari lands and not Janmi lands attracting the provisions of Tamil Nadu Act 24 of 1969. He further ordered that the land shall be so registered and patta be issued in favour of. the writ appellant under the Revenue Follow up work and outside the purview of Tamil Nadu Act 24 of 1969. He further held that as the land has been ordered to be treated as pre-existing ryotwari land, the question of merits of the case does not arise and he refrained from going into the merits of the case.

8. It was at this stage, the third respondent filed W.P. No. 1153 of 1982 praying for the issue of a writ of mandamus directing the Assistant Settlement Officer to give an opportunity to the petitioner M/s. Manjushree Plantations Ltd., to represent their case before granting patta in respect of the land comprised in R.S. No. 46B/IAIA/3 of O' Valley village, Gudalur taluk to the appellant herein. The learned Judge, Nainar Sundaram, J. was of the view that a civil suit had already been filed and it will be open to the petitioner (the third respondent herein) to prosecute the civil proceedings to protect its possession and as such the matter is on a very inchoate and ambiguous basis. He therefore dismissed the writ petition. Later on, coming to know that the enquiry had been completed and patta had been issued outside the Act to the appellant herein the third respondent herein filed Writ Petition No. 3671 of 1982 to quash the order dated 4.2.1982 and to direct the Assistant Settlement Officer, Gudalur to take up the enquiry under the provisions of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (Tamil Nadu Act 24 of 1969) after notice to the present third respondent. The matter was hotly contested and the learned Judge in his judgment recorded the following findings:

9. It could not be denied that the present third respondent filed objections dated 4.9.1981 before the Assistant Settlement officer. It is only in this context the court

cannot omit to take note of the fact that the third respondent stood registered as a tenant in the revenue records even as early as in 1972, if not earlier. There had been levy and collection from the third respondent of land revenue and cess by the State, prima facie, possession appears to be with the third respondent. This view he was expressing only tentatively and this need not be taken to be a categorical opinion on the question of possession. On 4.9.1981 there was a communication by the third respondent herein to the authorities concerned including the Assistant Settlement Officer coveting an opportunity to make a representation on the question of grant of patta. Though this communication had nothing to do with the proceedings under the Act actually conducted by the Assistant Settlement Officer at the relevant point of time, yet, the Assistant Settlement Officer did not care to put the third respondent on notice of the conduct of proceedings under the Act by him. This action on the part of the Assistant Settlement Officer is not commendable and it practically violates the mandates of the provisions of Section 12 read with Rule 8. The learned judge further observed as follows:

There were enough materials before the first respondent (Assistant Settlement Officer) indicating that the petitioner (the third respondent herein) may have a prima facie case entitling it for ryotwari patta under the Act. In spite of the plea by the petitioner to have an audience in the matter of grant of patta of course in general, it has been negatived, and hence there is every justification on facts, for holding that the proceedings conducted by the first respondent which culminated in the impugned order is not one conducted in due compliance with the statutory provisions. The fact that the omission to issue notice to the janmis and the tenants was an irregularity committed by the first respondent has been brought to the notice of the first respondent by the Tahsildar, Gudalur, and there is a reference to this in paragraph 6 of the impugned order. Rights vital for the petitioner have been practically abrogated by the impugned order leaving no remedy for it except to approach this court under its extraordinary jurisdiction. By the impugned order, the decision given is that the lands in question are pre-existing ryotwari lands and thereby, they go outside the purview of the Act. The joint patta obtained by the third respondent is for lands which are now given the denomination R.S. No. 554/3 and which as per the proceedings disclosed, admittedly, were part of S. No. 46-BIA/IA.3. The petitioner stood registered as a tenant in respect of the entirety of

the lands comprised in S. No. 46-B/1A/1A/3. It was not as if the petitioner had prima facie no semblance of right at all to the lands in question. As to how far such claims would fructify is a different matter. The contention of the third respondent that the lands to which the petitioner would make a claim are outside the lands to which the third respondent has obtained joint patta need not be gone into by this Court and any opinion expressed by it, and this should be a matter of investigation and decision by the first respondent under the Act and in that enquiry, the persons concerned who have a prima facie claim for patta under the Act must have audience and must be heard before there could be a proper decision under the Act. Equally so, the contention put forth by the third respondent that by virtue of Section 3 (c) and S.17 of the Act, the petitioner has no right to agitate under the Act could be the subject matter of scrutiny and decision by the first respondent. Since the processes contemplated by the statutory provisions have been by-passed and a decision which has obviously brought prejudice to the petitioner has come to be passed by the first respondent by the impugned order without affording an opportunity to it to make its say, I am obliged to interfere in writ jurisdiction.

10. On this finding, the learned judge allowed the writ petition, and directed that before final action is taken in this regard with regard to the issue of patta, the petitioner before the learned judge should be heard and the matter should be decided on merits. Hence the present writ appeal.

11. Mrs.Nalini Chidambaram, learned Counsel for the appellant raised before us the following points:

12. The decisions of the Supreme Court in C.A. No. 565 of 1964 concludes the rights of parties with regard to the entitlement of patta in favour of the appellant herein and therefore there is no possibility of issuing any notice at all to the third respondent herein. If on an earlier occasion the third respondent herein had been put on notice, nothing further requires to be done. The third respondent is not a person coming under the category of (a) Janmi (b) tenant or (3) cultivator and therefore is not entitled to notice. In any event, the judgment in O.S. No. 22 of 1978 District Munsifs Court, Gudalur puts the matter beyond doubt holding that the third respondent is not in possession, and if that be so, he would not be entitled to

notice. She further submitted that the form No. 6 notice has been issued to the third respondent, and if an objection is raised belatedly, there was no necessity to be heard. Lastly, she submitted that in so far as Writ petition No. 1153 of 1982 has been dismissed by the learned Judge, that cannot be ignored and the proceedings cannot be re-opened at the instance of a person who has no right.

13. The learned Government Pleader supports the stand of the learned Counsel for the appellant.

14. Mr.M.R.Narayanswami, learned Counsel for the third respondent would urge that C.A. No. 565 of 1964 has absolutely nothing to do with the lands in question. That related to a track of unsurveyed forest land in Nilambur Amsom, Ernad Taluk, Kerala State and what we are concerned with is land situated in Gudalur taluk, Tamil Nadu. Therefore, that argument cannot be pressed into service. This is a case where the impugned order dated 4.2.1982 was as a result of the suo motu enquiry. It is rather strange that the appellant herein alone was issued notice and no notice was ever issued to the third respondent. This is a case in which the learned judge himself has recorded a finding that the rights of the third respondent as a tenant were not denied. Again in so far as patta had been issued showing the third respondent as a tenant, the third respondent would be entitled to notice. Leave alone that. By an objection dated 4.9.1981 it was specifically prayed that the third respondent be heard before orders could be passed. For reasons best known, that was not done.

15. It was never the case of the appellant or even the Assistant Settlement Officer that the objection dated 4.9.1981 was belated. Such a plea is raised for the first time just for the purpose of getting over the non-issue of notice. This stand is not even taken by the learned Government Pleader.

16. With regard to the earlier writ petition, the learned Judge found that the suit in O.S. No. 22 of 1978 was pending and therefore the third respondent must seek its remedy in the suit. Looked at from this point of view, it cannot be held that the earlier writ petition has become final and therefore the present writ petition out of which the present appeal arises would become barred.

17. We are clearly of the view that the third respondent has been issued patta No. 19 which is as under:

O'Valley Patta No. 19	Jenmi Nilambur	Thirumulpad	Tenant: Manjushree Plantations Ltd.,	S. Nos. Extent LR. L.R. Remarks	46B/1A/1A3	12351.27	370.54
370.54Sd.	Compared	Sd.14.2.1972	15.3.1972	Revenue			
InspectorGudalur	Sd.24.3.1972	For Tahsildar, Gudalur./true copy/					

Therefore this position is beyond any doubt. As matter of fact, in the suo motu proceedings leading to the order dated 4.2.1982, the Tahsiidar, Gudalur filed the objection statement to the following effect:

The Supreme Court of India in its order in Civil Miscellaneous Petition No. 1229, dated 16.2.1977 has granted stay of operation of the judgment and order dated 23.9.1976 of the High Court of Judicature, Madras in W.P. No. 2307 of 1975 and had given direction to the respondent No. 3 viz. the Collector of the Nilgiris from interfering with the possession and enjoyment of the lands and estate in O'Valley village on the petition of M/s. Manjushree Plantations Ltd., The survey operations have been completed, but no settlement enquiries have been taken up in view of the stay orders. M/s. Manjushree Plantations have claimed possession and enjoyment of 19.675 acres in O'Valley village comprising of several other survey numbers including O.S.No46B/IA/IA3 in which the claim of M/s. Satyakumar Estate also lies. As such, the claim of M/s. Satyakumar Estates 'cannot be decided at this state.

It is clear from the objections that the Tahsildar had recognised the right of the third respondent herein. He states as follows:

The Tahsildar, Gudalur had put forth two important issues (1) the property claimed by M/s. Satyakumar Estates Private Ltd., lies in a total extent of 12,351.27 acres in O.S. No. 16B/1A/1A3 of O'Valley village for which extent M/s. Manjushree Plantations have obtained the stay from the Supreme Court of India. When the stay applies to the entire extent of 12,351.27 acres, the claim of M/s. Satyakumar Estates (Private) Ltd., which is lying in this total extent is also covered by the stay orders of the Supreme Court of India and as such the claim of M/s. Satyakumar

Estates (Private)Ltd., cannot be considered now and (ii) notices of enquiry had not been issued by the Assistant Settlement Officer to other Janmi and tenants and as such Assistant Settlement officer had committed an irregularity. As regards the questions of stay a reference was made to the local Government Pleader and he has offered his legal opinion on this point on 27.9.1981. He has expressed the view that the stay of the Supreme Court of India will not apply to the lands in possession of M/s. Satyakumar Estates Private Ltd., and he has also stated that he is of the opinion that Section 8 of the Act 24 of 1969 has no application to the present case. On the opinion of the Government Pleader, Section 8 of Act 24 of 1969 has no application to the present case, a clarification was sought from the Director of Survey and Settlement, Madras in the matter. In I.A.(confd)83/81 dated 27.10.1981 the Commissioner for Land Administration, Madras has ordered that the land claimed by M/s. Satyakumar Estates (P) Ltd. in R.S. No. 554/3 of O'Valley village in Gudalur taluk of the Nilgiris District shall be treated as pre-existing ryotwari land and not a janmi land attracting the provisions of Act 24 of 1969, and directed the Assistant Settlement Officer, Gudalur and the Collector of Nilgiris to take necessary action to treat the land in question as pre-existing ryotwari land, order registry of the land as such and issue patta in favour of the claimant under the Revenue Follow up work and outside the purview of Act 24 of 1969.

18. We are somewhat surprised first and foremost as to how the lands came to be treated as preexisting ryotwari lands. The learned Government Pleader is not in a position to enlighten as to how such a conclusion came to be arrived at and who then was paying ryotwari assessment till then. This is not that easy a matter where by mere whims and fancies such conclusions could be arrived at. More so, with regard to the abolition of the Janmi right. The Assistant Settlement Officer would refer to the order of the Commissioner for Land Administration, Madras. That is a confidential letter dated 27.10.1981. That letter reads as under:

PA. (Confdl) 83/81, dt. 27.10.1981:

The attention of the A.S.O.Gudalur and the Collector, Udagamandalam is invited to the references cited. With reference to report of the A.S.O.6th cited and read with the reiterated opinion of the Government Pleader, Udagamandalam, the

matter has been re-examined in greater detail after perusing all the connected records. The following instructions are issued in modification of the instructions issued in the reference 5th cited.

2. The land claimed by M/s. Satyakumar Estate (P)Ltd., in R.S. No. 554/3 of O'Valley village in Gudalur Taluk of the Nilgiris District, shall be treated as pre existing ryotwari land and not a Jenmam land attracting the provisions of Act 24 of 1969 as already decided by the O.S & S. in his references second and reiterated in the reference third cited.

3. In the circumstances, the Assistant Settlement Officer, Gudalur and the Collector are requested to take necessary action to treat the land in question as pre-existing ryotwari land, order registry of the land as such and issue patta in favour of the claimant under the Revenue follow up work and outside the purview of Act 24 of 1969.

4. The case file S.R. No. 4/81 (162 pages) received from the Assistant 'Settlement Officer is returned to him. He is requested to acknowledge the receipt.

19. We are of the view that this conclusion is rather whimsical. It should also be noted that even before this order, on 4.9.1981 the third respondent had sent its objections. We have already extracted the portions wherein the third respondent has pleaded that it should be afforded an opportunity. Unfortunately, it seems to have fallen on deaf ears. To make the matter worse, before the learned single Judge, a rather curious and an untenable stand was taken as though that representation was not received at all. But the learned Judge found that such a claim was top tall to be accepted. To quote the words of the learned Judge:

While the judgment is being dictated in open court, Mr.M.A.Sadanand, learned Government Advocate submits that such a communication is not found in the files. But it is not categorically asserted that such a communication was not at all sent to and received by the authorities concerned including the first respondent. Before the dictation of this order could be completed, the requisite postal acknowledgments have been produced and they have been filed into court. Hence there is no need to eschew this communication as not genuine. From this

communication, it is not possible to infer the knowledge of the petitioner of the pendency of the proceedings under the Act before the first respondent on the relevant date.

20. As per the impugned order, the first respondent commenced the enquiry under the Act on 13.8.1981 and in the body of the impugned order it is admitted that notices of enquiry were not issued by the first respondent to the Janmis and the tenants. On 28.9.1981 the first respondent completes the enquiry and on 27.10.1981 the Commissioner for Land Administration, Madras gave instructions to the first respondent which we have extracted above. We characterise the enquiry as perfunctory because strangely notice goes only to the appellant but not to the third respondent. Under these circumstances, to say that notice was issued prior to the suo motu enquiry is poor consolation. Therefore we reject that argument. Equally the argument that the third respondent is not a Janmi or tenant or cultivator will have to fall to the ground. As we have observed above, the patta recognises the right of the third respondent as the tenant. That was the reason why the Tahsildar raised the objection.

21. The judgment in C.A. No. 565 of 1964 does not advance the case of the appellant. As already stated, it related to a track of unsurveyed forest land in Nilambur Amsom, Ernad Taluk, Kerala State. What we are concerned is lands situated in Gudalur Taluk, Nilgiris District.

22. We are more than surprised to hear the argument of the learned Counsel for the appellant that the objection dated 4.9.1981 are belated, when such a contention is not even put forward before the learned Judge. If the Assistant Settlement Officer was completely ignorant about the objection and attempt was made, as pointed out above, to make it appear as though representations were not received at all, how it lies in the mouth of the appellant to advance such an argument and we reject it at once.

23. Earlier, W.P. No. 1153 of 1982 was filed and having regard to the pendency of O.S. No. 22 of 1979, the learned Judge directed the third respondent to seek its remedy in the civil suit. We are in entire agreement with the view expressed by the learned Judge that the action on the part of the first respondent is not

commendable and it practically violates the mandates of the provisions of Section 12 of the Act read with Rule 8. The third respondent is entitled to notice and if it had been denied, the elementary principle of law of being heard before orders are passed has been violated.

24. Lastly, turning to O.S. No. 22 of 1979 all thus was stated therein was that the third respondent, the plaintiff therein, would not be entitled to injunction because the exact extent covered by patta No. 19, could not be located and therefore injunction could not be granted in its favour. Further, it is submitted that the matter has not become final and admittedly an appeal has come to be filed and its pending.

25. Before we part with this case, we have got to give vent to our feelings. Here is a case where large extent of nearly 12,000 acres of land is involved. The order of the first respondent dated 4.2.1982 in a cavalier fashion treats a part of the same viz. 725-36 hectares as though they are preexisting ryotwari land. We do not expect revenue authorities to treat a matter of this kind in such a manner. After all, the very object of introducing ryotwari settlement is to confer rights for the purpose of collecting revenue. Then again, it is settled law as from the inception of Tamil Nadu Act 26 of 1948 till this date that patta granted under anyone of the abolition Acts is not a document of title but merely to enable the collection of revenue. The hierarchy of authorities constituted under the Act are ordained to determine the character of the land. That determination is warranted as we said above only by way of fixation of the tenure to enable the collection of land revenue. All these elaborate procedures are not contemplated in vain or to suit the convenience of the revenue officials. That is why we are more than surprised to see the confidential document which we have extracted above written by the Commissioner for Land Administration, Madras directing that patta be issued outside the Act as pre-existing ryotwari land. What sort of an enquiry was made, we have already noticed in detail. We only wish that the authorities entrusted with specific duties under the Act follow the procedure properly and act within the four corners of the Act and Rules without thinking that they are granting bounties as they please.

26. For all these reasons, we have not the slightest hesitation in dismissing the writ appeal with costs. Advocate's fee Rs. 2,000, Rs. 1,000 to be paid by the appellant and Rs. 1,000 to be paid by the Assistant Settlement officer.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com