

V. Chellappan Vs. the Special Commissioner and Commissioner of Land Administration

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Court : Chennai

Decided On : Jan-22-2004

Reported in : 2004(3)CTC325

Judge : N. Dhinakar and ;D. Murugesan, JJ.

Acts : Tamil Nadu (Transferred Territory) Ryotwari Settlement Act, 1964 - Sections 15; Madras (Transferred Territory) Ryotwari Settlement Rules, 1664 - Rule 7

Appeal No. : W.A. No. 4 of 2002

Appellant : V. Chellappan

Respondent : The Special Commissioner and Commissioner of Land Administration

Advocate for Def. : Gomathinayagam, Special Government Pleader

Advocate for Pet/Ap. : M.B. Dominique, Adv.

Disposition : Writ appeal allowed

Judgement :

ORDER

N. Dhinakar, J.

1. The appellant is the petitioner in W.P.No. 12916 of 1994 and he challenges the order of the learned Single Judge dated 16.4.2001. The writ petition was filed challenging the order of the revisional authority dated 30.6.1994 by which, the order of the Assistant Settlement Officer, dated 15.7.1974 was set aside and the property in dispute was treated as P.W.D. tank poramboke. The learned Single Judge dismissed the writ petition holding that the revisional authority has properly exercised his powers and it needs no interference, which is being challenged in the present writ appeal.

2. The learned counsel appearing for the appellant contends that the revisional authority had no powers to exercise suo motu revision to set aside the order of the Assistant Settlement Officer dated 15.7.1974.

3. Per contra, the learned Special Government Pleader submits that the power is vested in the revisional authority to exercise suo motu revision under Section 15 of the Tamil Nadu (Transferred Territory) Ryotwari Settlement Act, 1964 (hereinafter will be referred to as 'the Act').

4. We have carefully considered the contentions and perused the materials. The point for consideration is whether the revisional authority has powers to exercise suo motu revision on a petition filed by a third party, who is not a party before the Assistant Settlement Officer.

5. The materials placed before us show that on 15.7.1994, the Assistant Settlement Officer passed an order holding that the property bearing R.S.451/7 corresponding to O.S.No. 5971/B of Colachel village stands in the name of the appellant, Chellappan, son of Vedanayagam. While the matter stood thus, R. Selvanayagam and A. Swaminathan filed a suit in O.S.No. 329 of 1976 before the Principal District Munsif, Padmanabhapuram, whereas the appellant was shown as the second defendant, for a declaration that the suit property is a public tank. The said suit was dismissed for default. It became final, as no petition was filed to restore the suit on file. Pursuant to the orders of the Assistant Settlement Officer, the name of the appellant was entered into the revenue records treating the

property as the private tank belonging to the appellant herein. Thereafter, one N. Dannis filed a petition before the Special Commissioner and Commissioner of Land Administration, Chepauk, Madras-600 005. The said Commissioner took a suo motu revision on the basis of the said petition and set aside the orders of the Assistant Settlement Officer by his order dated 30.6.1994 holding that the tank in question is a P.W.D. poramboke tank.

6. Before we proceed to consider whether the revisional authority has powers to exercise suo motu revision, it becomes necessary to have a look at Section 15 of the Act and Rule 7 of the Madras (Transferred Territory) Ryotwari Settlement Rules, 1965 (hereinafter will be referred to as 'the Rules'). They read as follows:

15. Power of revision by Board Revenue. (1) The Board of Revenue may-

(i) on its own motion, call for and examine the records of any proceeding under this Act; or

(ii) on application made by any landholder in this behalf, call for and examine the records of any proceeding under this Act [not being a proceeding in respect of which an appeal lies to the Director under Sub-section (2) of Section 14], to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein, and if, in any case, it appears to the Board of Revenue that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly:

Provided that the Board of Revenue shall not pass any order under this Section prejudicial to any party unless he has had a reasonable opportunity of making his representation.

(2) The Board of Revenue may stay the execution of any such decision or order pending the exercise of its powers under Sub-section (1) in respect thereof.

(3) Every application to the Board of Revenue for the exercise of its powers under this Section shall be preferred within the prescribed period:

Provided that the Board of Revenue may in its discretion allow further time not exceeding one month for the filing of any such application if it is satisfied that the applicant had sufficient cause for not preferring the application within the prescribed period.

Rule 7. Revision by the Board of Revenue.- Every application for revision under Clause (ii) of Sub-section (1) of Section 15 shall be made in Form No. 1 to the Board of Revenue within sixty days from the date of communication of the order.

7. Clause (i) of Sub-section (1) of Section 15 shows that the revisional authority has the power of suo motu revision by calling for records and examine the same. Clause (ii) of Sub-section (1) of Section 15 relates to the power of the revisional authority to call for and examine the records of the proceedings on an application made by a landholder. A landholder, who is affected by the proceedings under this Act, shall make an application within a period of sixty days from the date of receipt of a copy of the order to the revisional authority. However, the revisional authority has the discretion to allow a further time, not exceeding a further period of thirty days, for filing the revision. A combined reading of the above Section and Rule discloses that the period of limitation prescribed thereunder would apply only in case of an application for revision is made by the landholder and not by any third party. Equally, when the power of suo motu revision is exercised, there is no limitation prescribed.

8. On the above background, it is now to be seen as to whether the order of the revisional authority dated 30.6.94 could be justified or not. The said order was not passed pursuant to any application made by a landholder in terms of Clause (ii) of Sub-section (1) of Section 15 of the Act. In that case, the question of limitation, as contemplated under Rule 7 of the Rules, does not arise. Factually, the petition was filed by one N. Dannis, on behalf of the public. When an application for revision is filed by a third party, question of limitation does not arise. This petition was treated as the cause for exercising the suo motu revisionary power for passing the order dated 30.6.94. Though there is no prescribed period of limitation, either for exercise of power of suo motu revision or on a petition by third party not being the land owner, we will have to consider as to whether the order of the revisionary

authority could be justified on the ground that the same was passed within a reasonable period. The order of the Assistant Settlement Officer was passed in favour of the appellant on 15.7.74. By that order, it was directed that the property bearing R.S.No. 451/7 corresponding to S.No. 5971-B shall be registered in the name of the appellant. Pursuant to the same, the property was registered in the name of the appellant on the ground that the property is only a private tank. After a lapse of nearly twenty years, it appears that a petition was filed by one N. Dannis, which was taken as a cause for exercising the revisionary power. We find absolutely no reason as to why the said N. Dannis did not bring to the notice of the revisionary authority, the grievance espoused in the petition, within a reasonable period. Further, we do not find absolutely any material in the order of the revisionary authority giving any sufficient cause for exercising the suo motu revision after a period of twenty years. Law is well settled that though the period of limitation is not prescribed, nevertheless, the authority empowered to exercise suo motu revisionary power shall act within a reasonable time. In our view, the period of twenty years cannot be considered as a reasonable time.

9. On the above sole ground, we find no merits in the order of the revisional authority dated 30.6.94. Accordingly, the order of the learned single Judge is set aside and the writ appeal is allowed. No costs.

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