



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

S.T.A.No.132 of 2021

M.Periyasamy (died)

1. Sellammal

2. Mani

... Appellants

Vs.

R.Ponnusami

.. Respondent

Special Tribunal Appeal filed under Section 26 of Act XXX of 1963 against the order of the Inam Abolition Tribunal, Cuddalore dated 30.04.2019 made in IATA No.1 of 1999 and praying this Court to set aside the order of the Tribunal and allow this appeal directing the Settlement Officer, Thiruvannamalai to issue joint patta to the appellants for their land in Survey No.101/7 in Mallaiampadi Village, Sakarapuram Taluk, Villupuram District.

For Appellants : Ms.A.Arulmozhi
For Respondent : No appearance

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J U D G M E N T

[[Order of the Court was made by M.SUNDAR, J.,]

Captioned 'Special Tribunal Appeal' ['STA' for the sake of brevity] is a statutory appeal. The memorandum of grounds of appeal before us says that it has been presented under Section 26 of Tamil Nadu Act No.30 of 1963 i.e., 'the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963'. This is vide the original memorandum of grounds of appeal presented in this Court way back on 09.08.2019. The memorandum of grounds of appeal is also dated 09.08.2019. Thereafter, when the appeal was processed, the caption has been changed and as per the caption it is an appeal under Section 30(1) of 'the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Tamil Nadu Act No. XXVI of 1948)'. For convenience, the former Statute will be referred to as 'Act 30 of 1963' and latter Statute will be referred to as 'Tamil Nadu Act No. XXVI of 1948'.

2. Today, Ms.A.Arulmozhi, learned counsel for appellants submitted that the captioned appeal is under Section 30 of Act 30 of 1963 as the entire



proceedings before the Original Authority i.e., 'Assistant Settlement Officer' ['ASO'], Thiruvannamalai and the statutory appeal before Tribunal [Principal Subordinate Judge's Court, Cuddalore] are under Act No.30 of 1963.

3. We, therefore, take up the captioned STA as a statutory appeal under Act 30 of 1963.

4. As regards the lone respondent [Thiru.R.Ponnusami, son of Thiru.Ramasami], the earlier proceedings made on 13.02.2024 and 05.03.2024 bring to light that the sole respondent has refused notice, as refusal tantamounts to service, name of the sole respondent is shown in the cause list, name of the sole respondent called out thrice in the Court/adjacent corridors and none appears, we heard out the captioned STA.

5.It is also seen from the case file that the lone respondent Thiru.R.Ponnusami, son of Ramasami remained *ex parte* before the Tribunal in the statutory appeal but in the light of reference to larger Bench on this



aspect of the matter vide Order XLI Rule 14 of 'the Code of Civil Procedure, 1908' ['CPC' for the sake of brevity], we go by the principle that refusal tantamounts to service.

6. Aforementioned proceedings made in captioned STA on 13.02.2024 and 05.03.2024 read as follows:

'Proceedings made on 13.02.2024

Captioned 'Special Tribunal Appeal' [hereinafter 'STA' for the sake of convenience and clarity] is a Statutory Appeal under 'the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act (Act 26 of 1948)' ['said Act' for the sake of brevity].

2. Ms.A.Arulmozhi, learned counsel for two appellants is before us and there is a sole respondent (Mr.Ponnusami, son of Mr.Ramasami).

3. Learned counsel for appellants points out that as regards sole respondent, an affidavit of service (AOS) has been filed on 12.09.2023 vide SR.No.31606 of 2023. To be noted, cause list also says 'AOS FILED'.

4. A careful perusal of aforementioned AOS and cause list shows that private notice remained 'unclaimed' once (11.11.2021) and was 'refused' later (07.01.2022).

5. In the light of the narrative thus far, Registry to show the name of sole respondent together with full / complete address as in the short and long cause titles in the next listing, which will be a fortnight hence.

List on 27.02.2024.'



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'Proceedings made on 05.03.2024

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 13.02.2024, which reads as follows:

'Captioned 'Special Tribunal Appeal' [hereinafter 'STA' for the sake of convenience and clarity] is a Statutory Appeal under 'the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act (Act 26 of 1948)' ['said Act' for the sake of brevity].

2. Ms.A.Arulmozhi, learned counsel for two appellants is before us and there is a sole respondent (Mr.Ponnusami, son of Mr.Ramasami).

3. Learned counsel for appellants points out that as regards sole respondent, an affidavit of service (AOS) has been filed on 12.09.2023 vide SR.No.31606 of 2023. To be noted, cause list also says 'AOS FILED'.

4. A careful perusal of aforementioned AOS and cause list shows that private notice remained 'unclaimed' once (11.11.2021) and was 'refused' later (07.01.2022).

5. In the light of the narrative thus far, Registry to show the name of sole respondent together with full / complete address as in the short and long cause titles in the next listing, which will be a fortnight hence.

List on 27.02.2024.'

2. Pursuant to aforementioned earlier proceedings, name of the sole respondent Thiru.R.Ponnusami together with full/complete address as in the short and long cause titles is shown in the cause list. Name of the sole respondent called out thrice in the Court as well as in the adjacent corridors but there is no response.

3. Be that as it may, as Mr.I.Umar Mohamed from the Chambers of Ms.A.Arulmozhi requests for a short accommodation citing difficulty for his senior Ms.A.Arulmozhi, who is to argue the captioned matter, request for adjournment acceded to.



List one week hence. List on 12.03.2024.'

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7. Aforementioned proceedings speak for themselves as regards service qua sole respondent.

8. Reverting to the captioned STA, the genesis of the same is an order dated 13.12.1998 made by jurisdictional Assistant Settlement Officer i.e., ASO, Thiruvannamalai granting ryotwari patta to the respondent. This order talks about '0.62.0 extent of land comprised in S.No.101/7 in Malliampadi Village, Sankarapuram Taluk, Villupuram District' [hereinafter 'said land' for the sake of convenience]. In the order of ASO, though the extent is shown as 0.62.0, the measure has not been mentioned but other particulars as available in the case file bring to light that the reference is to 62 cents of punja land.

9. Before we proceed further, we remind ourselves that as regards STA under Section 30 of Act 30 of 1963, we are hearing the matter as a Tribunal and not as a Division Bench vide ratio in *A.T.S.Chinnaswami Chettiar Vs.Sri Kasi Varadaraja Perumal Temple* reported in *1995 Supp(3) SCC 724*. We also remind ourselves that title suit can proceed independent of



proceedings under Act 30 of 1963 vide ratio in ***R.Manika Naicker Vs. E.Elumalai Naicker*** reported in ***(1995) 4 SCC 156*** wherein Hon'ble Supreme Court relied on ***State of Tamil Nadu Vs. Ramalinga Samigal Madam*** case reported in ***(1985) 4 SCC 10***.

10. Be that at it may, it may not be necessary to dilate further on the aforementioned aspects of the matter as learned counsel for appellant very fairly submitted that a legal drill on entire factual matrix may really not be necessary as she abridges the prayer. Learned counsel submitted that the impugned order made by the Tribunal i.e., order dated 30.04.2019 in I.A.T.A No.1 of 1999 [to be noted, as already alluded to supra, the Tribunal is Principal Sub-Court, Cuddalore] has remanded the matter back to the jurisdictional ASO with a directive to consider the matter *de novo* by examining the documents with the help of the Revenue Department, District Collector besides visiting and examining the suit property. This is vide paragraph 8 of the impugned order, which reads as follows:

'08) முடிவில், உரிய நிலவரி திட்டஉதவி அலுவலர், மீண்டும் இந்த அப்பீல் மனுவில் ஒரு விசாரணை நடத்தி ஆவணங்களை பரிசீலித்தும் மற்றும் வருவாய்துறை உதவியுடனும் மாவட்ட ஆட்சியர் உதவியுடனும் மீண்டும் நேரடியாக வழக்கு சொத்தினை பார்வையிட்டும்



ஆவணங்களை பார்வையிட்டு ஒரு தகுந்த முடிவு எடுக்க
வேண்டுமென்று தீர்ப்பளிக்கப்பட்டு இந்த அப்பீல்
மனுவானது திருப்பப்படுகிறது. '

11. Adverting to the aforementioned paragraph 8, learned counsel for appellants submitted that her abridged prayer is that it will suffice if there is a directive to the jurisdictional ASO i.e., ASO, Thiruvannamalai to do the aforementioned *de novo* exercise de hors the observations made in Paragraphs 1 to 7 by the Tribunal in the impugned order i.e., order dated 30.04.2019 in I.A.T.A No. 1 of 1999. Learned counsel submitted that the observations will stifle and bind the ASO and ASO will not be able to decide the matter by exercising all powers as the observations shrink the perimeter of his jurisdiction. We find that the impugned order itself has been made pursuant to an earlier order of remand order made in the earlier round of litigation being order dated 20.11.1996 made in S.T.A.No.7 of 1990.

12. Be that as it may, we also find from the case file that there is a title suit between the parties which has culminated in judgment and decree



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dated 04.09.2006 in S.A.No.374 of 1994 and that does not impede the legal drill before ASO qua the *de novo* exercise. We are issuing this directive in the light of the ratio that title suit and proceedings under Act 30 of 1963 can proceed independent of each other being ratio of Hon'ble Supreme Court in ***R.Manika Naicker Vs. E.Elumalai Naicker*** reported in ***(1995) 4 SCC 156*** wherein Hon'ble Supreme Court relied on ***State of Tamil Nadu Vs. Ramalinga Samigal Madam*** case reported in ***(1985) 4 SCC 10***. A quietus can be given only if jurisdictional ASO is able to exercise jurisdiction qua the entire perimeter of his power without being impeded by the observations of the Appellate Tribunal and therefore, if find little difficulty i.e., no difficulty in acceding to the abridged prayer set out /captured supra.

13. The sequitur of narrative, discussion and dispositive reasoning thus far is that the matter now stands remanded to the Original Authority i.e., Assistant Settlement Officer, Thiruvannamalai.

14. Considering the limited legal perimeter within which the captioned STA has now perambulated, we deem it appropriate to say that it



may not be necessary to dilate further on other facts and we leave it open for the ASO to do the *de novo* exercise. Considering the length of time i.e., taking into account the long chequered history and also considering that this is the second round of litigation, we deem it appropriate to direct ASO to complete the *de novo* exercise as expeditiously as his business would permit but in any event on or before 30.09.2024 (a little over six months from today).

15. Captioned STA is disposed of by partly allowing the same i.e., by saying that the remand made by the Tribunal vide paragraph 8 is sustained albeit with a rider that Original Authority while examining the matter *de novo* pursuant to the remand shall do so *de hors* i.e., uninfluenced and untrammelled by observations made by Tribunal in Paragraphs 1 to 7 and complete the exercise within the aforementioned time i.e., by 30.09.2024.

16. Captioned STA disposed of in the aforesaid manner. Considering the nature of the matter, there shall be no order as to costs.



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(M.S.,J.)

(K.G.T.,J.)

12.03.2024

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

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