

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

S.T.A. No. 4 of 2013

Arulmigu Jala Perumal Temple,
Kallapalayam,
H/o.Periyapatty
Rep. By its Executive Officer
/Fit Person ...Appellant

.Vs.

- 1.The Settlement Thasildar No.II
Gobichettipalayam
Now rep by Assistant Settlement Officer,
(South) and Additional Personal Assistant,
O/o, The Director of Survey and Settlement,
Chepauk,
Chennai - 600 005.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department
Perumal Kovil Street,
Tiruppur - 641 604.
- 3.The District Collector,
Tiruppur District,
Tiruppur - 641 604.
- 4.The District Revenue Officer,
Collectorate,
Tiruppur - 641 604
- 5.The Tahsildar,
Madathukkulam Taluk Office,
Udumalpet.
- 6.T.Arukaani
- 7.M.Sornabakyam

8.M.Visalakshi

9.B.Amshaveni

10.K.Balakrishnan

11.A.Kanagaraaj

12.K.Bannumathi

... Respondents

Prayer: Appeal filed under Section 30 of the Tamil Nadu Minor Inams (Abolition & Conversion into Ryotwari) Act, 1963 against the judgment and decree dated 13.03.2013 in C.M.A.No. 5 of 2011 on the file of the Minor Inams Tribunal, Subordinate Judge, Udumalpet, dismissing the appeal and confirming the order of Settlement Tahsildar, Gobichettipalayam II in S.R.No.506 of 1968, dated 13.06.1968.

For Appellant : Mr.K.Ashok Kumar

For Respondents : Mr.N.Manokaran for
Mr.R.Vinothraja for R7 to
R12

Mr.N.Manikandan,
Government Advocate
for R1 to R5

No appearance for R6

JUDGMENT

(Delivered by M.M.Sundresh,J.)

This appeal is preferred against the order of the Tribunal passed in C.M.A. No.5 of 2011 dated 13.03.2013, by which, the appeal filed by the appellant was rejected on the following grounds namely (i) the alienation made by the erstwhile service provider Govindayyan in favour of one Ponnandi by the sale deed dated 08.10.1889 has not been challenged; (ii) the respondents and the predecessor in title were in possession for more than sixty years; (iii) there was unexplained delay in filing the appeal; and (iv) the order dated 13.06.1968 passed by the Settlement Tahsildar indicates the service of notice to the Tahsildar, Udumalpet, the Assessment Settlement Officer and the

Assistant Commissioner, Hindu Religious and Charitable Endowments Department. It was recorded in the said judgment that the service inam makes a mention about the name of Govindayyan. Accordingly, the appeal was dismissed. Challenging the same, the present appeal is before us.

2. Learned counsel appearing for the appellant submitted that on a conjoint reading of Section 11(2) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 read with Rule 9 (4) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Rules, 1965 along with Form 5, a notice to the erstwhile inamdar is mandatory. Therefore, notice ought to have been given in favour of the appellant. There is no indication of the notice having been served on the Commissioner of Hindu Religious and Charitable Endowments. Even assuming that notice has been served after the proceeding was over on the Assistant Commissioner, Hindu Religious and Charitable Endowments, the same will not be a ground to deny the fact that the appellant is entitled to notice. The Tribunal presumed that notice has been served on the Assistant Commissioner, Hindu Religious and Charitable Endowments notwithstanding an affidavit filed by him that he has not been served. A service if made to the office of the Assistant Commissioner cannot be a service to the office of the Commissioner, Hindu Religious and Charitable Endowments.

3. He further submitted that the civil suits filed would not bar the maintainability of the appeal. The trial Court dismissed the suit filed by the appellant while allowing the suit filed by the respondents primarily on the ground that proceedings have become final inter se the parties, as one of the respondents was a lessee of the same property auctioned by the appellant and, therefore, it is not open to him to contend to the contrary. The appellant has filed appeals against the judgment and decree of the civil courts and, therefore, the judgment under challenge would require interference. To buttress his submission, learned counsel for the appellant has placed reliance upon the following decisions (i) Joint Commr., Hindu Religious and Charitable Endowments, Admn, Department v. Jayaraman and others reported in (2006) 1 SCC 257; and (ii) Rangasamy Naidu v. Veerappan and others reported in (1994) 1 MLJ 410.

4. Mr.N.Manokaran, learned counsel appearing on behalf of respondents 7 to 12 would submit that what has been settled few decades ago is sought to be resurrected through this appeal. The appeal filed by the appellant was hopelessly barred by limitation.

5. He further submitted that Section 11(2) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 r/w Rule 9(4) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Rules, 1965 and Form 5, do not provide for a hearing to the appellant. The order passed by the Assessment Settlement Tahsildar clearly specifies the fact that a copy has been marked to the Assistant Commissioner, Hindu Religious and Charitable Endowments. From the said fact, the Tribunal has rightly drawn an inference that it has been served on the said authority. The provisions provide for delegation of power from the Commissioner, Hindu Religious and Charitable Endowments to the Assistant Commissioner, Hindu Religious and Charitable Endowments. An application has been filed seeking invocation of Section 8(2)(i)(a) of the Act. Therefore, the Assessment Settlement Tahsildar was satisfied with the length of possession held by the predecessor in title and granted patta. As facts were gone into, there is no need for any interference. In support of his contention, learned counsel relied on the following decisions (i) R. Manicka Naicker and others v. E.Elumalai Naicker reported in (1995) 4 SCC 156, (ii) Dokiseela Ramulu v. Sri Sangameswara Swamy Varu and others reported in (2017) 2 SCC 69, (iii) Srinivasan and others v. Sri Madhyarjuneswaraswami, Pattaviathalai, Trichy reported in 1998 (I) CTC 630, (iv) Ramasamy v. Tamilverl reported in (2017) 5 CTC 804, (v) M. Liaquat Ali v. Sri Brahadambal Temple reported in (2002) 3 MLJ 296, (vi) Ayya Nadar and others v. Sri Vaidyanathaswami Koil Devasthanam reported in (1970) 2 MLJ 129 and (vii) V.P. Kandasamy and others v. Tahsildar, Coimbatore North Taluk, Coimbatore District and others reported in (2009) 1 MLJ 93.

6. We are not inclined to go into the facts of the case. We are concerned, at this stage, with the legal issue as to whether the appellant is entitled to be heard before the proceedings initiated under Section 8(2)(i)(a) r/w Section 11(2) of the Act and Rule 9(4) of the Rules along with Form 5 of the Act. We make it clear that these provisions do not make a specific reference on the entitlement of the erstwhile inamdar to be heard. However, we are of the view that when application is made on the ground that a patta is to be given for a person who stepped into the shoes of the erstwhile service holder on the premise that there was a sale subsequently and possession is for more than sixty years, a notice has to be issued necessarily to the erstwhile inamdar. This, we hold so only as a legal principle. Therefore, in a case where the Assessment Settlement Thasildar had indeed issued notices

and even thereafter the erstwhile inamdar did not appear, then the said inamdar cannot claim that there is no question of limitation nor can he plead that the findings rendered leading to the patta issued can be challenged at any point of time. At the cost of repetition, we say with an element of clarity that in a proceeding initiated seeking grant of patta under the Act, the erstwhile inamdar is entitled to be heard. Conversely, we hold that when an application is made by the erstwhile inamdar like a temple or a mosque, then the persons in possession are entitled to be heard. A provision of law will have to be read in such a manner that a party who is having a semblance of civil right is entitled to be heard. We do not find any express or implied exclusion of a party who is having civil right. This, we hold so on a construction of the provisions mentioned above, otherwise it will lead to an element of absurdity.

7. Issuing notice on an application to the applicant, Thasildar, HR&CE and Wakf Board cannot be a substitute to a person interested, namely, a person doing cultivation or service provider or an inamdar, such as temple or mosque. The Assessment Settlement Tahsildar involves himself in the process of adjudication. The Karnam or a Revenue Official is required to give the facts to the Assistant Settlement Officer for coming to a conclusion. Similarly, a Wakf Board or HR&CE authority, as the case may be, has got only administrative control over Temple or Wakf Board. Therefore, they cannot substitute themselves in the place of Wakf Board or a temple which is to be managed by the Board, Executive Officer or a fit person, as the case may be. In such view of the matter, we are of the view that the order passed by the Tribunal cannot be sustained in the eye of law.

8. The Tribunal has given an incidental finding without any basis and held that the sale deed dated 08.10.1889 has not been challenged. Admittedly, the appellant is not a party to the sale deed. Therefore, in law there is no need for a challenge to the sale deed. Secondly, the Tribunal is not right in holding that there was unexplained delay in filing the appeal. Inasmuch as the appellant was not a party to the proceedings initiated by the Assistant Settlement Officer, the said order cannot be put against it, and, therefore, the question of limitation would not arise in challenging the proceeding of the Assessment Settlement Officer. Thus, the finding rendered by the Tribunal to the said effect cannot be sustained.

9. The Tribunal has given the finding that patta has been issued in the name of Govindayyan. There is no difficulty about this aspect but the question is what is the nature of right granted. Therefore, we hold that these are the matters which are to be considered by the Tribunal afresh. We are remanding the matter leaving the issues open, as according to the appellant, while there is no dispute about the patta issued indicating the grant in favour of the service inamdar in the name of Govindayyan, the said document also indicates the position of the appellant as the inam holder. In such view of the matter, we are inclined to set aside the order passed by the Tribunal. Accordingly, the same stands set aside and the matter is remitted to the Tribunal for a fresh consideration.

10. While remanding the matter, all the issues are left open and the parties are at liberty to raise all the contentions before the Tribunal. However, in view of the apprehension expressed by the learned counsel appearing for the respondents, we frame the following issues for fresh consideration by the Court below:-

(i) Whether the appellant was put on notice before the Settlement Tahsildar or not?

(ii) Whether the appellant was served with the order passed by the Assessment Settlement Tahsildar or not?

(iii) Whether the respondents are entitled to contend that the appellant has to cancel the inam and if not, the effect of it?

(iv) The scope of the Civil Court decrees and their effect qua the present proceedings?

(v) The effect of the pendency of the appeals filed?

11. Thus, we call upon the Tribunal to go into all those issues apart from the other factual issues which have already been raised and likely to be raised. The parties are at liberty to file additional documents along with the oral evidence, if necessary. For the aforesaid reasons, we are not inclined to consider various decisions cited at the Bar.

In the result, the appeal is allowed and the matter is remanded to the Court below for fresh consideration in the light of the observations made above qua the issues framed. No costs.

ssm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Minor Inams Tribunal,
Udumalpet.
2. The Settlement Thasildar
Gobichettipalayam.
3. The Settlement Thasildar No.II
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Now rep by Assistant Settlement Officer,
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7. The Tahsildar,
Madathukkulam Taluk Office,
Udumalpet.

+1cc to Mr.K.Ashok Kumar, Advocate, SR.No.29452
+1cc to Mr.N.Manokaran, Advocate, SR.No. 29374

S.T.A. No. 4 of 2013

Kak(04/04/2019)