



W.A.No.3178 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON: 13.07.2023

DELIVERED ON: 27.09.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.3178 of 2019

and

CMP.Nos. 20082 and 22765 of 2019

1.The Director of Survey & Settlement
Survey House,
Chepauk, Chennai-600005.

2.The District Collector,
Krishnagiri District,
Krishnagiri.

3.The District Revenue Officer,
Krishnagiri District
Krishnagiri

4.The Revenue Divisional Officer,
Krishnagiri District,
Krishnagiri.

5.The Tahsildar
Krishnagiri Taluk,
Krishnagiri.

..Appellants

Vs

K.Shreenivasa Rao

..Respondent



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 09.04.2019 made in W.P.No.1637 of 2016 and consequently allow the writ appeal.

For Appellants : Mr.S.Silambanan, AAG-II
Assisted by Mrs.Geethathamarai Selvan-
Spl.GP

For Respondent : Mrs.AL.Ganthimathi, Senior Counsel,
For Mr.A.R. Karthik Lakshman

JUDGMENT

D.KRISHNAKUMAR., J.

Aggrieved by the order of the learned Single Judge in W.P.No.1637 of 2016, dated 09.04.2019, the present writ appeal is filed.

Brief facts:

2. The respondent's forefathers had initiated a suit in O.S.No. 784 of 1982 for declaration and permanent injunction restraining the respondents therein from peaceful possession and enjoyment of the property. They marked documents as Ex.P1 to Ex.P20, asserting their rights over the land. The civil court, however, rejected their claim, citing reasons such as the absence of cultivation evidence for the requisite years as prescribed in the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (in short 'Inam Abolition Act') and the said land is classified as "Communal Poromboke".



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2.1. Subsequently, an appeal was preferred by the respondents/plaintiffs in A.S. No. 140 of 1995. The lower appellate court concluded that the respondents herein/plaintiffs are entitled to Ryotwari Patta as per the Inam Abolition Act. The court relied on evidence indicating continuous possession by the respondents' predecessors and their cultivation of the land. Based on the said judgment, the respondent herein/plaintiff has approached the District Revenue Officer seeking Ryotwari patta and the same came to be rejected. Aggrieved by the said order of DRO, the respondent herein has filed a writ petition in W.P.No.1637 of 2016. The writ Court by order dated 09.04.2019 directed the authorities concerned to act in accordance with the order passed by the Civil Court. Challenging the same, the department has filed the present writ appeal.

3. Mr.S.Silambanan, learned Additional Advocate General, appearing for the appellants submitted that the documents submitted by the respondent herein before the trial court and the lower appellate court did not sufficiently prove their long-term cultivation of the property for the requisite periods i.e cultivation for 12 years prior to 1st April 1960 to grant of Rayatwari patta as prescribed under Sec.11 of the Act. After Inam Abolition Act came into force,



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the property claimed by the plaintiffs in survey no. 19/1 & 19/2 were removed from the revenue records.

4. The learned Additional Advocate General has further submitted that as per Section 71 of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963, the order of the of the Settlement Tahsildar becomes final and an appeal against the same would lie to Tribunal under Section 12 (2) of the Act. When the provisions of the Act envisages approaching the settlement officer within a time frame for Ryotwari Patta and the order of the settlement officer was not challenged before the Tribunal, the lands classified as Anadheenam in the revenue records, the civil court have no jurisdiction. Therefore, the order of the writ court directing the authorities to make entry in the revenue records as per the civil court decree is unsustainable and liable to be set aside.

5. Mrs.A.L.Ganthimathi, learned senior counsel appearing for the respondent, on the other hand, relied on the judgment of the lower appellate court, asserting that the Adangal receipts indeed established their possession and enjoyment of the property. The learned senior counsel further argued that the rejection order passed by the Settlement Officer dated 31.12.1968 was



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marked as Ex.P21 before the lower appellate court. Since, the appellants/respondent did not produce the sale deeds, the settlement officer has rejected their application for grant of ryotwari patta. But the said sale deeds were also marked before the lower appellate court as Ex.P1 to P3.

6. The learned senior counsel appearing for the respondent has further submitted that the lower appellate court has also considered the copies of Adangal receipts marked by the respondent herein/appellants as Ex.R3 to Ex.R.10, which proves the continuous possession and enjoyment of the subject property. But, the department/authority did not produce any document or Adangal receipts prior to the year 1960. Based on the aforesaid records, the lower appellate court has rightly concluded that the respondents herein/appellants were in continuous possession and enjoyment of the subject property and therefore they are entitled for grant of Ryotwari Patta.

7. The learned senior counsel has further submitted that though the District Revenue Officer has rejected the representation made by the respondents seeking Ryotwari Patta without considering the judgment passed by the lower appellate court, but the Writ Court has rightly issued directions to the authorities concerned, concurring with the judgment passed by the Civil



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Court, therefore the order of the writ court is perfectly valid and does not warrant any interference by this Court.

8. Heard Mr. S.Silambanan, learned Additional Advocate General-II appearing for the appellants, and Mrs.A.L.Ganthimathi, learned Senior Counsel appearing for the respondent and perused the materials available on record.

9. Now, the only point that arose for consideration in the instant appeal is whether the civil court is having jurisdiction to entertain the suit, especially when there is an implied bar in view of enactment of Special Act viz., Inam Abolition Act.

10. Section 9 of CPC deals with the jurisdiction of civil courts. It says that the courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

11. No doubt, a litigant having a grievance of a civil nature has a right to institute a civil suit unless its cognizance is barred, either expressly or impliedly.



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12. Suits expressly barred means a suit is said to be ‘expressly barred ’ when it is barred by any enactment for the time being in force. It is open to a competent legislature to bar jurisdiction of civil courts with respect to a particular class of suits of a civil nature, provided that, in doing so, it keeps itself within the field of legislation conferred on it and does not contravene any provision of the constitution.

13. Suits impliedly barred means a suit is said to be impliedly barred when it is barred by general principles of law. Where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form than that given by the statute. Where an act creates an obligation and enforces its performance in a specified manner, that performance cannot be enforced in any other manner.

14. The Hon'ble Supreme Court in the case of ***Firm Seth Radha Kishan & others Vs. Shikar Chand, (reported in AIR 1963 SC 1547)*** lay down the legal position regarding jurisdiction of civil courts and the same is extracted below;

“Under section 9 of the civil procedure code the court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. A statute,



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therefore, expressly or by necessary implication can bar the jurisdiction of civil courts in respect of a particular matter. The mere conferment of special jurisdiction on a tribunal in respect of the said matter does not in itself exclude the jurisdiction of civil courts. The statute may specifically provide for ousting the jurisdiction of civil courts; even if there was no such specific exclusion, if it creates liability not existing before and gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular forum in which the remedy could be had. Even in such cases, the civil court's jurisdiction is not completely ousted. A suit in a civil court will always lie to question the order of a tribunal created by statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the act but in violation of its provisions."

15. Admittedly, on the case on hand, after Inam Abolition Act came into force, the lands were taken by the Government, the Settlement Officer, Salem has considered the name of R.Narasinga Rao and R.Krishnaji Rao, the paternal uncle and father of the respondents respectively, in respect of the land in Survey Nos. 44/3 to an extent of 1.11.5 hectares, S.No. 44/4 to an extent of 1.35.5 hectares, S.No. 44/9 to an extent of 0.23.0 hectares, S.No. 44/10 to an extent of 0.23.0 hectares, S.No. 19/1 to an extent of 8.66.0 hectares. But no Inamdars appeared for enquiry despite service of proper notices and not



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adduced any evidence regarding the personal or cultivation by labours in the lands for a continuous period of three years in the preceding 12 years as per Section 9(1)(a)(i) of the Act. The evidence of the Village Karnam before the Settlement Officer revealed that no evidence were furnished for grant of patta and regarding lease of lands, that the lands were not partitioned among the inamdars and accordingly it was concluded by the Settlement Tahsildar that the lands were not partitioned among the inamdars and therefore no ground was made out for grant of patta in the name of Inamdars and the said land was classified as Communal Poromboke by the Settlement Officer by order dated 31.12.1968.

16. Challenging the aforesaid rejection of the Settlement Tahsildar, the respondent's father and forefather filed a suit in O.S.No. 784 of 1982 after limitation period and the same was entertained by the civil court without deciding its jurisdiction. It is to be noted that the settlement Officer, who is the competent authority for issuing ryotwari patta, was not impleaded before the civil court. A suit for declaration that too claims based on the Inam Abolition Act may not be pressed into service before a civil court. Even though the suit was styled as one for declaration of title, which perse would be maintainable before any competent civil court, the foundation upon which the said case was



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projected was purely based on the proceedings under the Inam Abolition Act.

Therefore, in such circumstances, the civil suit was clearly not maintainable and barred U/s. 9 of the Code of Civil Procedure. Further, the proper and necessary party, as already noticed above us, viz., by the settlement officer was not even made a party to the said suit.

17. A perusal of the judgment and decree passed by the Civil Court and the Lower Appeal Court would also clearly reveal that the respondent's predecessors have produced only Adangal receipts to support their claim that too only from the year 1987. In view of the Inam Abolition Act, persons who claim Ryotwari Patta has to produce documents or receipts to prove the personal cultivation of lands for continuous period of three years in the preceding 12 years prior to 01.04.1960 or 27.09.1955 as prescribed under Section 11 the Act. But in the present case they have not placed necessary records/materials to prove their possession especially for a period of 12 years prior to the enactment of the said Act, the Government has taken the possession and the entries in the revenue records also stood as Government Poromboke. Therefore we safely come to a conclusion that the property in question is come under the Inam Abolition Act.



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18. As per Section 71 of the Act, as against the order of the Settlement officer, the remedy available to them is to approach the Tribunal/Special Commissioner and thereafter an appeal before this Court. The time limit for such appeal is provided under Section 12 (2) of Act. It is also stated no such order or decision shall be liable to be questioned in any Court of law. The relevant portion of the Act is extracted below;

“12. Determination of lands in which any person is entitled to ryotwari patta. -

(1) The Settlement Officer shall examine the claims of any person for a ryotwari patta under section 9 or section 10 or section 11, as the case may be, and decide in respect of which lands the claim should be allowed.

(2) Against a decision of the Settlement Officer under sub-section (1), the Government may, within one year from the date of the decision, and any person aggrieved by such decision may, within three months from the said date, appeal to the Tribunal:

Provided that the Tribunal may, in its discretion, allow further time not exceeding six months for the filing of any such appeal:

Provided further that the Tribunal may, in its discretion, entertain an appeal by the Government at any time if it appears to the Tribunal that the decision of the Settlement Officer was vitiated by fraud or by mistake of fact.



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71. Finality of orders passed under this Act.-

(1) Any order passed by any officer, the Government or other authority or any decision of the Tribunal or the Special Appellate Tribunal under this Act in respect of matters to be determined for the purposes of this Act shall, subject only to any appeal or revision provided by or under this Act, be final.

(2) No such order or decision shall be liable to be questioned in any Court of law. “

19. In view of the provisions under Section 71 of the Act (extracted above), as against the order passed by the Settlement Officer, the appeal provision is only before the Tribunal or any Special Appellate Tribunal as specified under this Act and not before the Civil Court. Therefore, as discussed above, since the said Act provides specific remedy to enforce its performance in a specified manner, that performance cannot be enforced in any other manner and there is implied bar for the civil court to entertain the suit.

20. In this context it is useful to rely upon the decision of the Hon'ble Full Bench of this Court in W.P.Nos. 20765 to 20767 of 1998, dated 07.02.2006 in the case of ***P.Maragathamani & Others Vs.General Manager (In-charge), Bharat Heavy Electrical Limited & Others (reported in MANU/TN/8147/2006)*** while deciding the maintainability of civil court decree directing the authorities to issue community certificate of a particular



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community, has held that “when the special procedure and remedy provided to approach particular forum in particular manner either by statute or by statutory instructions through Government orders as alternative remedy, had to be sought for only through said special provisions in stated manner – Thus, suit was not maintainable and not binding on authorities, as principles of natural justice were fully complied with.”

21. In the recent judgment, the Hon'ble Supreme Court in the case of ***South Delhi Municipal Corporation & Anr Vs. M/s Today Homes and Infrastructure Pvt. Ltd. Etc.*** in Civil Appeal Nos.6377-6378 of 2019, dated 19.08.2019, while dealing with the jurisdiction of court in matters pertaining to assessments made under the Act, by relying upon various decisions of the Hon'ble Supreme Court, has held as follows;

14. Applying the criteria mentioned in Dhulabhai (supra), we are of the opinion that the Civil Court's jurisdiction is impliedly barred for the following reasons:

(i) There is no pre-existing liability of tax under Common Law. The liability has been created by Delhi Municipal Corporation Act along with a remedy by way of an appeal to the Municipal Taxation Tribunal. Necessarily, where a party aggrieved by the decision of the authorities has to resort to the remedy provided under the Statute, civil courts' jurisdiction is barred. See (In Firm Seth Radha



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*Kishan v. Administrator, Municipal Committee, Ludhiana
9 , Firm of Illury Subbayya and In Ram Swarup and Ors.
v. Shikar Chand)*

*(ii) Section 171 of the Act gives finality to orders passed by
Municipal Taxation Tribunal, which shows the
intendment of the legislature to exclude jurisdiction of
civil courts.*

*(iii) The remedy provided by Section 169 of the Act is an
adequate and effective remedy. We are not in agreement
with the High Court that an appeal provided by the Statute
against orders of assessments, containing an ‘onerous’
pre-condition of deposit of the entire amount in dispute, is
not an effective remedy.*

*15. We seek support for these views from a judgement of this
Court in Srikant K. Jituri v. Corporation of the City of Belgaum¹¹
. The question that arose for consideration of this Court in the said
judgment was regarding the jurisdiction the civil courts being
barred by Rule 25 contained in Part-I of Schedule-III of the
Karnataka Municipal Corporations Act, 1976. Resolving the
dispute about the maintainability of a civil suit against the order
passed by the revisional authority, this Court held that the suit was
not maintainable. In the said case, the submission on behalf of the
Assessee was that the right to second appeal to the District Court
as per the provisions of the Act was coupled with an onerous
condition i.e. deposit of the entire amount of property tax. Hence,
it was pleaded that the remedy provided under the Act was not
adequate. This Court rejected the said submission by holding that
the alternate remedy provided by a statute not being an adequate*



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or efficacious remedy, is not a ground for maintaining a civil suit. However, this Court was of the opinion that a Writ Petition under Article 226 is maintainable if the remedy provided in the statute is not efficacious.

16. We have examined the plaint filed by the Respondents carefully. We do not see any allegation made regarding the violation of any provisions of the statute. There is also no pleading with regard to non-compliance of any fundamental provisions of the statute. It is settled law that jurisdiction of the civil courts cannot be completely taken away in spite of either an express or implied bar. The civil courts shall have jurisdiction to examine a matter in which there is an allegation of non-compliance of the provisions of the statute or any of the fundamental principles of judicial procedure. A plain reading of the plaint would suggest that the order impugned in the suit is at the most an erroneous order. No jurisdictional error is pleaded in the plaint. Therefore, the question of maintainability of the suit does not arise. In the absence of any pleadings in the plaint, the High Court ought not to have remanded the matter back to the learned Single Judge.

17. For the aforementioned reasons, judgement of the Division Bench of the High Court is set aside and the appeals are allowed.”

22. In the case on hand, as against the order of the Settlement Officer, R.Narasinga Rao and R.Krishnaji Rao (father and forefather of the respondent) did not chose to file any appeal before the appropriate forum as enumerated under the Act extracted above. Besides, the Government also issued orders in G.O.No. 370 Commercial Taxes and Religious Department dated 03.10.1974,



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to enable eligible ryots and land owners, who failed to apply for grant of ryotwari patta in time. Thereafter the Government in G.O.No. 1889 Commercial Taxes and Religious Department, dated 24.12.1976, extended the time limit for making application for grant of ryotwari patta till 31.03.1977. But the said R.Narasinga Rao and R.Krishnji Rao did not chose to avail the above opportunity and remained silent. Without utilising the above opportunities granted under the Act as well as under the Government Orders outside the scope of the Act, the respondent's predecessors had approached the Civil Court against the order of the Settlement Officer without seeking remedy before the Tribunal as prescribed under Section 12 of the Inam Abolition Act.

23. Applying the principles laid by the Hon'ble Supreme Court in the decisions cited supra, we are of the opinion that the Civil Court's jurisdiction in entertaining the suit filed by the respondent's predecessor is impliedly barred for the following reasons;

- (i).Section 12 (1)(2) of the Act clearly prescribes the competent authority and to grant patta and the time limit to prefer appeal to the tribunal against the order of the competent authority viz., settlement officer.



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(ii).Section 71 of the Act, prescribes the finality of orders passed under this Act. It says no such order or decision shall be liable to be questioned in any Court of law.

24. In view of the above settled principles of law we conclude that challenging the said rejection order of the settlement officer, the respondent ought to have approached the Tribunal as prescribed under Section 12 (2) of the Act, Further, as per the decisions of the Hon'ble Supreme Court and the Hon'ble Full Bench of this Court cited supra, the suit entertained by the civil court by its judgment and decree in O.S.No.784 of 1982, dated 31.01.1995 is impliedly barred by its jurisdiction. Consequently, the decree granted by the Lower Appellate Court in favour of the respondent herein in A.S. No. 140 of 1995, dated. 07.01.1997 has become nullity. Therefore, we safely conclude that the order of the learned Single Judge, directing the authorities concerned to make entries in the revenue records as per the judgment and decree of the Civil Court is legally unsound and the same is liable to be set aside.



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WEB COPY 25. In fine, the impugned order of the learned Single Judge made in W.P.No. 1637 of 2016, dated 16.08.2019 is set aside. The writ appeal filed by the department is allowed. No costs. Connected Miscellaneous Petitions are closed.

[D.K.K., J.] [P.B.B., J.]

27.09.2023

Index:yes
Internet:yes
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To

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**D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.**

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**Pre-Delivery Judgment in
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and
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27.09.2023