

## B. Jayachandran Vs Mrs. Vasanthamani and Others

**Court:** Madras High Court

**Date of Decision:** March 3, 2010

**Acts Referred:** Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 " Section 11, 11(3), 3, 45

**Citation:** (2010) 2 LW 394

**Hon'ble Judges:** M. Jeyapaul, J

**Bench:** Single Bench

**Advocate:** R. Thiagarajan for R.N. Amarnath, for the Appellant; T.R. Rajagoplan for Chitra Sampath, for RR 1 to 5, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

M. Jeyapaul, J.

Civil Revision Petition No. 3618 of 2009 is filed by the second Respondent in C.M.A. No. 24 of 2009 challenging the

interim order passed as against him in I.A. No. 488 of 2009 and Civil Revision Petition No. 3619 of 2009 is filed by the second Respondent in

C.M.A. No. 24 of 2009 praying to strike off the entire proceedings in C.M.A. No. 24 of 2009 on the file of the Principal Subordinate

Judge/Special Tribunal under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963.

2. Brief facts of the case:

a) The suit properties bearing Survey Nos. 281 and 284 Uppilpalayam Village, Coimbatore District measure 6.39 acres and 5.71 acres

respectively. The said lands were originally enfranchised as village service inam. After the commencement of the Tamil Nadu Minor Inams

(Abolition and Conversion into Ryotwari) Act, 1963 (hereinafter called as "the Act"), the inam tenure of the lands stood abolished and the land

vested with the Government with effect from 15.2.1965, the appointed day under the Act. There were no claims from any quarters with respect to

those properties. Therefore, the Settlement Officer IV, Gobichettipalayam conducted a suo motu enquiry u/s 11 of the Madras Minor Inams

(Abolition and Conversion into Ryotwari) Act, 1963. The Settlement Officer, having found that the Petitioner herein was in possession and

enjoyment of the property, exercising his "iruvaram" rights, by proceedings dated 10.8.1968 directed to issue Ryotwari patta in respect of those

lands in the name of the Petitioner. As no appeal was preferred by anyone questioning the said order, the Settlement Officer, Coimbatore Taluk

issued patta in the name of the Petitioner, consequent upon the order passed by the Settlement Officer on 10.8.1968.

b) The Petitioner, thereafter, was served with a memo dated 5.12.2008 by the Tahsildar, Coimbatore South Taluk stating that one Muralidharan

and the heirs of late Ramasamy Naidu and Bakthavachalam Naidu had applied for change of patta in their names. A Writ Petition in W.P. No.

1356 of 2009 was filed by the Petitioner herein questioning the said memo issued by the Tahsildar, Coimbatore South Taluk. This Court was

pleased to quash the said memo by its order dated 27.4.2009 holding that the Tahsildar had no jurisdiction to enquire and change the name in the

revenue records after the order of the Settlement Officer under the Act. This Court also made an observation that the dispute regarding the

property can be decided in the suit in O.S. No. 937 of 2009 already filed by the Petitioner or in the appropriate proceedings initiated by the 6th

Respondent herein.

c) Respondents 1 to 5 herein filed O.S. No. 354 of 2009 against the Petitioner herein praying for declaration of title and for consequential

permanent injunction with respect to the suit properties. They have also pleaded for declaration that the proceedings of the Settlement Tahsildar,

Gobichettipalayam made on 10.8.1968 is nonest, void ab initio, illegal and not binding on them. Thereafter, the present proceedings in C.M.A.

No. 24 of 2009 under the Act were initiated by Respondents 1 to 6. The papers in C.M.A were returned by the Principal Subordinate Judge,

Coimbatore stating that the claim of Respondents 1 to 6 herein could be established in an appropriate suit for declaration of title and cancellation of

the order passed by the Tahsildar granting Ryotwari patta. Contending that appeal alone would lie questioning the order of Settlement Officer and

that no forum can entertain proceedings against the order of Settlement Officer, the Civil Miscellaneous Appeal papers were re-presented and the

Principal Subordinate Judge took the Civil Miscellaneous Appeal on file.

d) Respondents 1 to 6 filed an interim application in I.A. No. 488 of 2009 wherein an ex parte order restraining the Petitioner herein not to

operate the order of the Settlement Officer dated 10.8.1968 was passed. Aggrieved by the said ex parte order, C.R.P. No. 3618 of 2009 was

filed and claiming that Respondents 1 to 6 have filed C.M.A. No. 24 of 2009 abusing the process of law, C.R.P. No. 3619 of 2009 was filed

seeking to strike off the entire proceedings in the aforesaid Civil Miscellaneous Appeal.

3. The submissions made by the learned Counsel appearing for the revision Petitioner:

In the suo motu enquiry conducted by the Settlement Officer, the Petitioner was found in possession of the suit properties enjoying kudivaram

rights. The order passed by the Settlement Officer directing to issue patta in the name of the Petitioner has become final as there was no appeal

preferred within the period of limitation contemplated u/s 45 of the Act. The Civil Miscellaneous Appeal preferred after a lapse of 40 years is

simply a misuse of the process of law. The patta was granted in the name of the Petitioner. Chitta and Adangal stand in his name right from the year

1968. This Court directed in the earlier Writ Petition filed by the Petitioner herein to agitate the claim of the Respondents in the suit already laid by

the Petitioner seeking permanent injunction or in the appropriate suit that may be filed by the Respondents. Having already filed a suit in O.S. No.

354 of 2009 as directed by this Court in W.P. No. 1356 of 2009, the present Civil Miscellaneous Appeal has been filed suppressing the fact that

a comprehensive suit was already laid for a declaration of title and also to nullify the order passed by the Settlement Officer. As the order passed

by the Settlement Officer was already given effect to by the authorities, the question of directing the Petitioner not to give effect to the order

already passed does not arise for consideration.

4. The submissions made by the learned Senior Counsel appearing for Respondents 1 to 5:

Though Respondents 1 to 5 have already filed a suit for declaration of title and also to nullify the order passed by the Settlement Officer,

Respondents 1 to 6 are entitled to challenge the order passed by the Settlement Officer by preferring Civil Miscellaneous Appeal aggrieved by the

order passed by the Settlement Officer, inasmuch as the certified copy of the order passed by the Settlement Officer was issued only after a

direction was given by this Court in W.P. No. 1356 of 2009. The Civil Miscellaneous Appeal has been preferred in time. The suit properties were

dealt by the family members of Respondents 1 to 6 in the three partitions that took place in their family. As the Settlement Officer had totally

ignored the above facts and ordered to issue patta in the name of the Petitioner herein, the Respondents have rightly challenged the impugned order

passed by the Settlement Officer directing issuance of patta. There is nothing wrong in passing an order by the Trial Court not to give effect to an

order which was already passed by the Tahsildar without adverting to the real facts in this case.

5. Decision of the court:

The order passed by the Settlement Officer dated 10.8.1968 would go to show that the Settlement Officer, having found that the suit properties,

which were originally enfranchised as village service inam, stood abolished consequent upon the commencement of the Madras Minor Inams

(Abolition and Conversion into Ryotwari) Act, 1963 and the properties also got vested in the Government with effect from the appointed day viz.,

15.2.1965 free from all encumbrances u/s 3(b) of the Act, embarked upon a suo motu enquiry u/s 11 of the Act and having examined the Karnam

of the village as CW1 in the absence of the participation of any interested person and having found that the Petitioner alone owned and enjoyed the

suit properties with iruvaram rights, directed issuance of Ryotwari patta u/s 11 of the Act. The extract of inam B register marked as Ex.C1 also

was adverted to by the Settlement Officer while passing the aforesaid order. The documents produced before the court would go to show that the

patta was duly issued to the Petitioner and Chitta and Adangal also stand in the name of the Petitioner.

6. All of a sudden, the Tahsildar, Coimbatore South Taluk issued a notice dated 5.12.2008 to the Petitioner informing him that one Mu-ralidharan

and the heirs of late Ramasamy Naidu and Bakthavachalam Naidu had applied for change of patta in their name, as the Petitioner's name was

found in the revenue records. The said memo issued by the Tahsildar was put to challenge in WP. No. 1356 of 2009 by the Petitioner. In the

order passed by this Court in W.P. No. 1356 of 2009 dated 27.4.2009, this Court held that the Tahsildar, Coimbatore South Taluk has no

jurisdiction to transfer the patta by holding that patta issued under the Act was not maintainable. This Court also made an observation after

directing the authorities concerned to furnish certified copy of the order dated 10.8.1968 passed by the Settlement Officer to seek remedy in a suit

already filed in O.S. No. 937 of 2009 or file a separate suit for declaration of title.

7. Pursuant to such a direction, it is found that Respondents 1 to 5 have filed a suit in O.S. No. 354 of 2009 praying for declaration of title,

permanent injunction and also for declaration that the proceedings of the Settlement Tahsildar, Gobichettipalayam made on 10.8.1968 is non est,

void ab initio, illegal and not binding on them.

8. Thereafter, the present proceedings in C.M.A. No. 24 of 2009 was filed before the Principal Subordinate Judge, Coimbatore, who rightly

returned the appeal papers suggesting that Respondents 1 to 5 could file a separate suit for declaration of title and also for cancellation of the order

passed by the Settlement Officer. It appears that Respondents 1 to 5, having completely suppressed the fact that a comprehensive suit was already

filed before the competent court for the aforesaid reliefs, insisted that an appeal alone would lie questioning the order of the Settlement Officer and

no forum can entertain the proceedings against the order of the Settlement Officer.

9. The Full Bench of this Court in Srinivasan and six others Vs. Sri Madhyarjuneswaraswami and five others, has held as follows:

... the jurisdiction of the civil Courts cannot be held to have been completely ousted or barred at any rate in respect of adjudication of claims of title

and questions or issues which are not obliged or required to be adjudicated for the purposes of enforcement of these laws which has, as their

objection and aim, to implement ryotwari settlement in the areas governed by them.

Further, the mere fact that the orders passed or decisions rendered under these Acts were given finality for the purposes of those Acts or that the

issues, which they are obliged or required to be decided, when so decided are ordained to bind the parties to the proceedings or their privies and

successors-in-interest applying the principles of res judicata, does not have the effect of ousting the jurisdiction of the Civil Court once and for all.

It is by now well settled that even in cases where finality is accorded to any decision or order, there are certain well settled exceptions and proved

and existence of such exceptional factors, the Civil Court is entitled to nullify any or all such decisions.

10. The jurisdiction of the civil courts to decide the title to the property involved, despite the finality reached with respect to the issuance of the

patta under the Act was addressed by this Court. It has been declared that the civil court can nullify any decision arrived at by the Settlement

Officer under the Act when the Trial Court found that there exist exceptional factors to take such a decision.

11. The Settlement Officer cannot decide the title to the suit properties now under challenge. The same can be decided only by the competent civil

court. Further, the Respondents herein chose not to challenge the order passed by the Settlement Officer for the past 40 long years. It is also not a

case where the proceedings were initiated by the Settlement Officer at the instance of the Petitioner herein. No efforts were taken by the Petitioner

for issuance of Ryotwari patta in his name pursuant to the coming into force of the Act. Only in the suo motu enquiry, the Settlement Officer, having

adverted to the vital documents and the evidence given by the Karnam of the village, directed issuance of patta in the name of the Petitioner herein

as he was found to be in possession enjoying iruvaram rights.

12. This Court in W.P. No. 1356 of 2009 indicated that the Settlement Officer has no authority to change the patta based on the application given

by Respondents 1 to 6. But, the same can be agitated in an appropriate suit. An appropriate suit also was filed by Respondents 1 to 5 arraying the

sixth Respondent as fourth Defendant in O.S. No. 354 of 2009 seeking a declaration of title, permanent injunction and also declaration that the

proceedings of the Settlement Officer, Gobichettipalayam made on 10.8.1968 is non-est, void ab initio, illegal and not binding on them. In the said

comprehensive suit, the potential dispute with regard to title to the property is going to be decided. The Principal Subordinate Judge, Coimbatore

also returned the Civil Miscellaneous Appeal papers directing them to go in for a suit for declaration of title. But, suppressing the suit which was

already filed, the Civil Miscellaneous Appeal has been preferred questioning the order passed by the Settlement Officer about 40 years ago.

13. Of course, as per Section 11(3) of the Act, any person aggrieved by the decision of the Settlement Officer can prefer an appeal within three

months from the date of the order passed by him. The appellate Tribunal has been given a discretion to allow further time not exceeding two

months for filing such appeal. But, Section 45 of the Act would read that the date of communication of the copy of the order to the Appellant shall

be deemed to be the date of the order.

14. By no stretch of imagination, Respondents 1 to 6 could be classified as persons not interested by the order passed by the Settlement Officer.

Though they are entitled to challenge the order passed by the Settlement Officer, the court finds that challenging the order passed by the Settlement

Officer before the Special Tribunal after a lapse of 40 years more especially when a comprehensive suit was already filed praying for larger relief

including the relief of nullification of the order under challenge would be an exercise in futility. Further, Respondents 1 to 6 cannot be permitted to

continue the proceedings in C.M.A. No. 24 of 2009, abusing the process of law at this distance of time. Pendency of the comprehensive suit and

the pendency of the Civil Miscellaneous Appeal also would also pave way for conflicting verdicts.

15. It is found that the impugned order passed by the Settlement Officer had already been given effect to wayback in the year 1968 itself,

immediately after the impugned order was passed by the Settlement Officer. Quite unfortunately, the Tribunal chose to pass an ex parte order

directing the parties not to give effect to the impugned order passed by the Settlement Officer. Such an order is found to be a totally ill-conceived

and erroneous one.

15. In view of the above facts and circumstances, the interim order passed in I.A. No. 488 of 2009 in C.M.A. No. 24 of 2009 stands set aside

and the entire proceedings in C.M.A. No. 24 of 2009 is also struck off from the file of the Principal Subordinate Judge/Special Tribunal under the

Tamilnadu Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963, Coimbatore and consequently, both the Civil Revision Petitions stand

allowed. There is no order as to costs. The connected Miscellaneous Petition stands closed.