Rasu Pillai Vs The Addl. Tahsildar (kudiyiruppu), Mayiladuthurai and Others

Court: Madras High Court

Date of Decision: July 9, 1985

Citation: (1985) 98 LW 424 : (1985) 2 MLJ 390

Hon'ble Judges: S. Nainar Sundaram, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

S. Nainar Sundaram, J.
The petitioner in this writ petition claims that he was an occupant of a kudiyiruppu within the meaning of the Tamil

Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 (Act XL of 1971), hereinafter referred to as the Act. On 19th June, 1971

he applied for the kudiyiruppu patta, seeking determination of the question as to whether he was in such occupation or not. According to the

petitioner, he is an agriculturist cultivating nanja lands of about 4.13 acres belonging to the 4th respondent as a tenant and further he is occupying a

site measuring 7 cents in S. No. 108 in Mannampanthal vattam, Mayiladuthurai taluk, and the superstructures put up thereon, both belonging to the

4th respondent. The petitioner would characterise his occupation of this site of an extent of 7 cents as occupation of a kudiyiruppu within the

meaning of the Act. The 4th respondent contested the case of the petitioner, stating inter alia that the demise was not only of this site of 7 cents but

also of the superstructures put up thereon as a single unit, under a tenancy arrangement while the petitioner served the 4th respondent as a car

driver, and since the petitioner has been removed from service, he could not continue to be in occupation of the premises and in any event, there

could not be a claim for kudiyiruppu under the Act by the petitioner. The 4th respondent also raised a controversy over the claim of tenancy put

forth by the petitioner with regard to the nanja lands of about 4.13 acres, with which we are not very much concerned in these proceedings in view

of the point raised. The first respondent heard the matter, opined that the site and the superstructures belonging to the 4th respondent would not be

an impediment with regard to countenancing the claim of the petitioner for kudiyiruppu patta and following a pronouncement of Sethu-raman, J., in

K. Visalakshi v. Maruthamuthu Pillai (1981) 94 L.W. 514, granted ""the petitioner the kudiyiruppu patta in respect of the 7 cents of site along with

the superstructure thereon since as per the provisions of Section 3 (2) of the Act, the superstructure shall also vest in the occupant of the

kudiyiruppu. The 4th respondent appealed and the appeal came to be heard and disposed of by the 2nd respondent and by the order impugned in

the writ petition, the second respondent reversed the order of the first respondent holding that the demise was not only of the site but also of the

superstructure and hence the provisions of the Act could not be invoked. The second respondent chose to follow the pronouncement of

Suryamurthy, 3., in T.K. Narayana Pillai Vs. Naganatha Iyer, . The order of the second respondent is being put in issue in this writ petition.

2. There is a controversy as to whether the petitioner is, an agriculturist within the meaning of the Act. The petitioner claims himself to be an

agriculturist. This is not being accepted by the 4th respondent. It has come out from the materials placed in the case that while the petitioner was

serving the 4th respondent as a driver, he was inducted into possession of the premises--both the site and superstructure--and his services have

been terminated subsequently and further, he was also given a lease of nanja lands of an extent of 4.13 acres. The first respondent proceeded that

the petitioner is an agriculturist within the meaning of the Act, on the ground that he must be cultivating this extent of nanja lands. However, in the

order passed by the second respondent, I do not get indication of any positive adjudication on this question. On behalf of the 4th respondent, it is

contended before me that even assuming that the petitioner is an agriculturist, yet, the demise by way of a lease in favour of the petitioner being not

only of the site of an extent of 7 cents, but also of the superstructure thereon as a single unit, both belonging to the 4th respondent, the provisions of

the Act could not at all be invoked, and, the subject-matter of demise and the occupation by the petitioner was not of a kudiyiruppu within the

meaning of the Act. Learned Counsel for the petitioner does not dispute before me that the demise in favour of the petitioner by way of lease was

not only of the site but also of the superstructure standing thereon as a single unit. What he would contend is that by virtue of Section 3(2) of the

Act, even though the superstructure belongs to the 4th respondent, it would come to vest in the petitioner and the occupation of the petitioner

would still be characterised as kudiyiruppu within the meaning of the Act and hence the rights under the Act could be claimed and granted.

Learned Counsel for the petitioner places reliance on the pronouncement of Sethuraman, J., referred to above. As against this Mr. B. Kumar,

learned Counsel for the 4th respondent, would submit that the very definition "kudiyiruppu" in Section 2 (8) of the Act speaks about the site of any

dwelling house or hut occupied, either as tenant or as licensee, by any agriculturist or agricultural labourer and furthermore, the definition of

"tenant" u/s 2 (11) of the Act contemplates tenancy of the site alone and hence only if the demise is of the site alone and not of the site and the

superstructure as a single unit, the ouccpant of such a site could claim kudiyiruppu rights and the definition of "kudiyiruppu" under the Act does not

and cannot take in the demise on lease of a premises consisting of site and superstructure as a single unit.

3. Before I assess the contentions put forth by the respective Counsel, I would like to advert to the relevant provisions of the Act. Section 2 (8)

defines "kudiyiruppu" as follows:

Kudiyiruppu means the site of any dwelling house or hut occupied either as tenant or as licensee, by any agriculturist or agricultural labourer and

includes such other area adjacent to the dwelling house or hut as may be necessary for the convenient enjoyment of such dwelling house or hut.

Explanation....

Section 2 (11) defines "tenant" in the following terms:

"Tenant" means any person who has paid or has agreed to pay rent or other consideration for his being allowed by another to enjoy the land of the

latter under a tenancy agreement, express or implied, and includes his heirs and legal representatives.

Section 3 reads as follows:

Occupant of kudiyiruppu to become owner: (1) Any agriculturist or agricultural labourer who was occupying any kudiyiruppu on the 19th June,

1971, either as tenant or as licensee shall, with effect from the date of the commencement of this Act, be the owner of such kudiyiruppu, and such

kudiyiruppu shall vest in him absolutely free from all encumbrances.

(2) Where, in the case of occupant of kudiyiruppu referred to in Sub-Section (1), the superstructure belongs to any person other than such

occupant, such superstructure shall also, with effect from the date of the commencement of this Act, vest in such occupant absolutely free from all

encumbrances.

A bare reading of Section 2 (8) which defines kudiyiruppu leaves no room for doubt in the mind of the Court that "kudiyiruppu" could have

reference only to the site. Such a site must have been occupied by an agriculturist or agricultural labourer, either as a tenant or as a licensee. There

ought to be a dwelling house or a hut over the site. The dwelling house or hut could belong either to the occupant or to any person other than such

occupant--may be the owner of the site also. The site will take in not only the exact area over which the dwelling house or hut has been put up, but

also such other area adjacent to the dwelling house or hut as may be necessary for the convenient enjoyment of such dwelling house or hut. For the

purpose of understanding the definition of kudiyiruppu u/s 2 (8), it is proper to advert to and keep in mind the definition of "tenant" occurring in

Section 2(11) of the Act, which speaks about only a tenancy of the land. The very object of the Act is to provide for the conferment of ownership

rights on the occupants of kudiyiruppu in the State of Tamil Nadu, as its very preamble would indicate. Its object is not to cover and take in

demise of premises, consisting of site and superstructure as a single unit, either on lease or licence. The demise by way of lease or licence ought Ito

have been of the site alone.

4. In T.K. Narayana Pillai Vs. Naganatha Iyer, , Suryamurthy, 3., had to deal with this question squarely and the observations of the learned Judge

run as follows:

The question to be considered is whether Sub-Section (2) of Section 3 will avail the defendant in the instant case. Sub-Section (2) of Section 3 will

be applicable only if the defendant proves that he is an occupant of a kudiyiruppu and as "kudiyiruppu" means the site of any dwelling house or hut,

occupied by him, either as tenant or licensee, he should have taken the site alone on lease, if he is to claim the benefits of the Act. Any other

interpretation of the definition of kudiyiruppu in Sub-Section (8) of Section 2 of the Act will have far-reaching and calamitous consequences,

because every agriculturist who is in occupation of a house as a tenant within the area to which the Act applies can then claim the benefits of the

Act, not only in respect of the site but also of the house.

This ratio of the learned Judge has been followed by Mohan, 3., in Manickam v. Dharmapuram Adheenam (1984) 2 M.L.J. 148. No exception

could be taken to the ratio enunciated by the learned Judges of this Court who had occasion to deal with the question directly. On my own

assessment also of the provisions of the Act, I have to hold that only where an agriculturist or an agricultural labourer was in occupation of a site on

a lease or a licence, express or implied, such a site could fall within the meaning of kudiyiruppu. If the demise is both of the site and the

superstructure as a single unit, the matter could not be brought within the purview of the Act. Section 3 (2) of the Act has got a purpose to serve,

viz., where the superstructure belongs to any person other than the occupant of a kudiyiruppu, such superstructure shall also vest in the occupant

as per the terms of that Section. But, that purpose cannot be extended to say that even though the demise in favour of the occupant was not only of

the site, but also of the superstructure as a single unit, the provisions of the Act would be attracted and the occupant could claim the rights

conferred by the Act. In the decision relied on by the learned Counsel for the petitioner, Sethuraman, J., had no occasion to consider the question

directly, because this question never arose before the learned Judge in the manner in which it has arisen before me and the other two learned

Judges of this Court. In the case dealt with by Sethuraman, J., the lower appellate Court, in a civil litigation, declined to countenance the case of a

person, defendant in the suit, that he is entitled to the benefits of the Act, on the ground that where the site as well as the superstructure belong to

the owner, the occupant could not become entitled to the benefits of the Act. The facts of the case, the contentions of the parties and the point

dealt with by the learned Judge are totally different. This is quite evident from the relevant passage occurring in the judgment of Sethuraman, J.,

which passage stands extracted as follows:

The lower appellate Court took three possible cases that may arise for the application of this provision. In the first category of cases falls a case

where the site belongs to a particular person and the agriculturist has put up a superstructure. The second category comprises a case where a site

belongs to a particular person and the superstructure belongs to a third party and the agriculturist is in occupation of the property. The lower

appellate Court is of the view that to these two categories of cases, the provisions of the Act would clearly apply. This view is correct. The third

category of cases mentioned by the lower appellate Court is where the site as well as the superstructure belongs to the owner. In such a case,

according to the lower Appellate Court, the occupant does not become the owner. For the purpose, reliance is placed on the following words in

Sub-Section (2) of Section 3, viz., the superstructure belongs to any person other than such occupant''. It is not clear how the Court understands

the above words to mean that the superstructure must belong to a third party and not the owner of the site itself. So long as the occupant is not the

owner of the superstructure, Sub-Section (2) of Section 3 would apply. The words "the superstructure belongs to any person other than such

occupants'' would include all those cases where the occupant is not the Owner but some one else is, whether he is the owner of the site or a third

party. The provision is so clear in its language that it is rather surprising that the lower appellate Court came to the conclusion that Sub-Section (2)

of Section 3 does not apply to a case where the superstructure and the site belong to the same owner. In this case, there is no dispute that the

defendant was an agriculturist. On this construction of the provision it would follow that the defendant was entitled to rely on Section 3 (2) of the

Act read with Section 2 (8).

The first authority, viz., the first respondent, was not in order in placing reliance on the judgment of Sethuraman, J., on the facts of the case to

uphold the claims of the petitioner and the appellate authority, viz., the second respondent, in my view, did the right thing in following the

pronouncement of Suryamurthy, J.

5. In the circumstances stated above, I could not uphold the grievance of the petitioner that there was any error committed by the second

respondent by passing the impugned order. Accordingly, this writ petition fails and the same is dismissed. There will be no order as to costs.