CHIGURUPATI VENKATA SUBBAYYA & ORS.

v.

PALADUGA ANJAYYA & ORS.

January 24, 1972

[K. S. HEGDE, P. JAGANMOHAN REDDY AND D. G. PALEKAR, JJ.]

Madras Estates Land Act (1 *of* 1908), *ss.* 20*A and* 189, *and Item* 6, *Part B of Schedule—Collector's order under s.* 20*A—When affects the communal use of lands—Jurisdiction of Civil Courts, when barred.*

Madras Estates (Abolition and Conversion into Ryotwari) Act (26 *of* 1948), *ss.* 11 *and* 56*—Power of Settlement Officer to grant patta with respect to communal lands—Decision of Settlement Officer, when final.*

A suit by the respondents for a declaration that certain lands were communal lands was decreed by the High Court in appeal. In appeal to this Court, it was contended that: (1) the Collector held under s. 20A of the Madras Estates Land Act, 1908, that the lands were no longer required for the purpose for which they were originally intended; (2) the first appellant had been in possession of the lands after obtaining a grant from the Zamindar; (3) after the abolition of Estate under the Estates Abolition Act, 1948, the lands were granted to him by the Estates Manager; (4) during the pendency of the suit, the Assistant Settlement Officer granted a patta to him under s. 11 of the Abolition Act; (5) the decision of the Assistant Settlement Officer was final under s. 56 of the Abolition Act; (6) the Civil Court had no jurisdiction under s. 189(1) of the Estates Land Act; and (7) that under s. 3 of the Abolition Act, the communal rights were abolished.

Dismissing the appeal,

HELD: (1) Under s. 20A of the Estates Land Act. before the Collector can order diversion of the use of any communal land, he should first declare that the land is no longer required for any of the purposes referred to in s. 3(16) (a) and (b), then direct *by order in writing* that the land be used for any other specified communal purpose, and if it is not so required, then it may be converted into ryotwari land or landholder's ryoti land according as the reversionary right vested in the Government or the landholder. In the present case, the Collector, apart from making the order that the lands were no longer required for the original purpose, did not make any other order in writing. [178 G-H; 179 A-B]

(2) In view of ss. 20 and 20A of the Estates Land Act, the Zamindar did not have any right to deal with the communal lands. [176 D-E]

(3) The order of the Estates Manager is ineffective because it proceeded on the erroneous assumption that the lands had already been converted into ryotwari lands. [179 C-D]

(4) The lands in dispute are not lanka lands, nor were they declared to be ryoti lands either under the Abolition Act or the Estates Land Act. The Assistant Settlement Officer has no power to convert communal land into ryoti land. Therefore, he has no competence under s. 11 of the Abolition Act to grant the ryotwari patta. [180 D-E]

Valathar Moopananri v. *Board of Revenue* 1966 (1) M.L.J. approved.

(5) Under s. 56 of the Abolition Act, the decision of the Settlement Officer is made final only with respect to matters referred to in s. 56(1) but the question whether the lands in dispute continued to be communal lands does not fall within its scope. [181 B-C]

(6) Under s. 189(1) of the Estates Land Act the jurisdiction of the civil courts is taken away only in respect of suits or applications of the nature specified in Parts A and B of the Schedule to the Act. Item 5 of Part B of the Schedule refers to a decision of the Collector under s. 20A-(1), but, in the present case, there is no such order in writing. [181 F-G]

(7) Under s. 3 of the Abolition Act, the lands vest in the Government, but the rights of the community over the lands were not taken away. Under the Act, only the rights created by the principal or other land holder were abrogated, but the rights of the community over the lands were not such rights. [182 D-E]

CIVIL APPELLATE JURISDICTION : C.A. 556 of 1967.

Appeal by Special leave from the judgment and decree dated August 29, 1966 of the Andhra Pradesh High Court in Second Appeal No. 644 of 1962.

R. Vasudev Pillai and *P. Kesava Pillai*, for the appellants.

K. R. Chaudhuri and *K. Rajendra Chowdhary*, for respondents Nos. 1 to 4.

The Judgment of the Court was delivered by

Hegde, J. This is an appeal by special leave. Defendants 2 to 7 in the suit are the appellants in this appeal. The plaintiffs who are respondents 1 to 4 herein sued for a declaration that Survey Nos. 12 to 18 comprising an extent of 10 acres 54 cents in South Vallur village of Vijayawada Taluk are communal lands, the villagers therein having rights of irrigation and drainage. In that suit they challenged the assignment of suit lands in favour of the 2nd defendant (1st appellant) by the Estates Manager by his order of December 21, 1952. They also sought a permanent injunction restraining the defendants from interfering with the exercise of their rights in those lands. Further they prayed for a mandatory injunction against defendants 2 to 7 directing them to restore "Agakodu" at their own cost to its original condition. The plaintiffs brought the suit in a representative capacity after obtaining the permission of the court.

The 2nd defendant resisted the suit on various grounds. He pleaded that he had been in possession of Survey Nos. 12 to 15 ever since 1946, after obtaining a grant from the Zamindar of the South Vallur under Patta Ex. B-8 dated January 15, 1946. According to him after the abolition of the Estates under the Estates Abolition Act, 1948 (in short the Estates Abolition Act), Survey Nos. 16 to 18 were held to be unnecessary for the original purpose

by the Collector. Thereafter those Survey Nos. were granted to him by the Estates Manager under Exh. B-16. He further pleaded that during the pendency of the suit, a Patta for the suit lands was granted to him under s. 11 of the Estates Abolition Act by the Assistant Settlement Officer under Exh. B-30 dated December 10, 1955.

The trial court dismissed the plaintiffs' suit upholding the contentions of the 2nd defendant. It came to the conclusion that the plaintiffs had failed to establish the communal character of the lands pleaded by them and further even if those lands were communal lands at one time, they had ceased to be such in view of the various orders passed by the authorities.

The first appellate court reversed the findings of the trial court and decreed the plaintiffs' suit as prayed for. It came to the conclusion that the lands in question were communal lands and the villagers had rights of irrigation and drainage through those lands. It further came to the conclusion that the various orders referred to by the 2nd defendant in his written statement were either invalid or ineffective. The High Court has affirmed the decision of the 1st appellate court.

Mr. R. V. Pillai, the learned Counsel for the appellants formulated three contentions before us *viz.* (1) that the conclusion reached by the 1st appellate court and affirmed by the High Court that the lands in question are communal lands has no basis in evidence; (2) that the Civil court had no jurisdiction to entertain the suit and (3) in any event the communal rights in the suit lands were extinguished under s. 3 of the Estates Abolition Act.

We shall now proceed to examine these contentions. But before doing so, it is necessary to point out that Mr. Pillai attempted to reopen questions of fact which appear to have been conceded before the High Court. We have not permitted him to do so. From the judgment of the High Court, it is clear that the arguments in that court proceeded on the basis that the suit lands were once communal lands; Survey Nos. 12 to 15 even now continue to be communal lands but Survey Nos. 16 to 18 ceased to be as such because of the order passed by the Collector, Krishna on October 29, 1946 under s. 20-A(1) of the Madras Estates Land Act as well as that passed by the Estates Officer and Assistant Settlement Officer subsequently, to which we shall refer presently. In the course of the judgment the learned judge of the High Court observed :

> "It is not in dispute that the lands S. Nos. 12 to 18 and measuring 10 acres and 54 cents, situate in South Vallur village in Vijayawada taluk are poramboke lands.

A That they were used for the purpose of irrigation and drainage is also not in dispute. It is common ground that under Ex. A-1, the Collector, Krishna passed an order under Section 20-A(1)(a) of the Madras Estates Land Act as amended by Madras Act VIII of 1934 to the effect that lands, S. Nos. 16, 17 and 18 were no B longer required for the purpose for which they were originally intended. Under that order, the Collector asked the Zamindar to say whether he had got any reversionary rights in the lands. What happened subsequently is not clear from the record. It is however common ground that S. Nos. 12 to 15 (both inclusive) continued C to be communal lands and no order under section 20-A(2) was at any time passed by Collector converting these communal lands into ryotwari lands or assigned them to anyone till the estate was abolished. It will thus be clear that there was merely a declaration that S. Nos. 16, 17 and 18 were no longer required for the purpose for which they were originally intended. No further D order converting those lands to ryotwari lands was passed and that S. Nos. 12 to 15 continued to be communal lands till the estate was abolished."

In view of the stand taken by the appellants before the High Court, it is not permissible for them to contend that Survey Nos. E 12 to 18 were at no time communal lands nor is it open to them to contend that Survey Nos. 12 to 15 do not still continue to be communal lands. The controversy as regards the nature of the lands, therefore, must be confined to Survey Nos. 16, 17 and 18. In this view, the first contention of Mr. Pillai fails so far as Survey Nos. 12 to 15 are concerned.

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So far as Survey Nos. 16 to 18 are concerned, it was said that these lands had ceased to be communal lands as a result of the various orders passed by the authorities. Let us examine whether this contention is correct? Before doing so it is necessary to refer to some of the provisions in the Estates Land Act as well as the G Estates Abolition Act. No material was placed before the court to show that the South Vallur Zamindari Estate included Survey Nos. 12 to 18. Section 3 of the Estates Land Act defines an "Estate" as meaning :

(a) "any permanently-settled estate or temporarily-settled zamindari;

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(b) any portion of such permanently-settled estate or temporarily-settled zamindari which is separately registered in the office of the Collector;

(c) any unsettled palaiyam or jagir;

(d) any inam village of which the grant has been made, confirmed or recognized by the Government notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees.

Explanation (1) Where a grant of an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that inam which have already been granted on service or other tenure or been reserved for communal purposes."

This definition does not help the appellants. The appellants have failed to establish that the Zamindar could have conveyed any right in the suit lands to the appellants. In view of s. 20 and 20-A of the Estates Land Act, to which we shall refer a little later, no Zamindar appears to have had any right to deal with communal lands. Hence the alleged grant by the Zamindar, does not appear to confer on the first appellant any title.

This takes us to the question whether the order made by the Collector on October 18, 1946 (Exh. A-1) can be considered as having conferred any title on the Zamindar in respect of Survey Nos. 16, 17 and 18. That order reads :

"Re. A3-13 M.P. 46 Exhibit A.1

Proceedings of the Collector, Krishna at Chilakatapudi.

Sub : E.L. Act—Bezwada Taluk, South Vallur, S. Nos. 17, 18, 16 Enquiry under Section 20-A. Order under Section 20-A(1)(a) passed.

Read : This office D. Dis. 5876-45 D/29-3-45 and R.D.O's Dis. 9609/46 dated 18-10-46.

ORDER

Under Section 20A(1)(a) of the Madras E.L. Act as amended by Madras Act VIII of 1934, the lands mentioned in the schedule below are declared to be no longer required for the purpose for which they were originally intended.

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SCHEDULE

Taluk	Village	S. No.	Extent	Original classification.
Bezwada	South Vellur	16	0-85	Agakodu P.W.D.
B		17	1-72	Drainage channel
		18	1-19	Poramboke

Sd/-
29/10 Collector

C (2) The Zamindar is requested to state whether he has any oral or documentary evidence to prove that the reversionary right in the lands vest in him and to adduce it if any, before the Collector within sixty days from the date of this order.

Sd/-
22-10-53,
D Try. Deputy Collector,
Krishna".

For determining the effect of that order, it is necessary to refer to some of the provisions of the Estates Land Act. Section 3(2) of that Act defines "ryot" as meaning :

E "a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it"

"Ryoti land" is defined in s. 3(16) which says :

F "'Ryoti land" means cultivable land in an estate other than private land but does not include—

(a) . . . . .

(b) throshing-floor, cattle-stands, village sites, and other lands situated in any estate which are set apart for the common use of the villagers.

G (c) . . . . ."

Section 20-A of the Estates Land Act says :

"(1) Subject to such rules as the State Government may prescribe in this behalf, the District Collector may on the application of the landholder, a ryot or any other person interested—

H (a) declare that any land or any portion of any land which is set apart for any of the purposes referred to in sub-clauses (a) and (b) of clause 16 of

section 3 is no longer required for its original purpose; and

(b) by order in writing direct—

(i) that any such land or portion in respect of which such declaration is made be used for any other specified communal purpose; or

(ii) if such land or portion is not required for any communal purpose, that it be converted into ryotwari land or landholder's ryoti land according as the reversionary rights in such land vest under the terms, express or implied of the sanad, title-deed or other grant (in the Government) or in the landholder :

Provided that before making any such declaration and order, the District Collector shall have due regard to any other customary rights of the landholder or the ryots in the user of such land or portion and shall satisfy himself that the exercise of such rights would otherwise be provided for adequately if the declaration and order are put into effect :

Provided further that in the case of any land of the description referred to in sub-clause (a) of clause (16) of section 3 the reversionary rights in which vest in the landholder under the terms, express or implied, of the sanad, title-deed or other grant, any order under sub-clause (i) of clause (b) shall be made only with the consent of the landholder.

(2) Without the written order of the District Collector under clause (b) of sub-section (1), no land which is set apart for any of the purposes referred to in sub-clauses (a) and (b) of clause (16) of section 3 shall be assigned or used for any other purpose. Nothing contained in this sub-section shall affect or take away or be deemed to affect or take way the customary rights of the landholder or the ryots in the user of any such land."

Before the Collector can order the diversion of the use of any communal land, he sholud first declare that the land or any portion of that land is no more required for any of the purposes referred to in sub-clauses (a) and (b) of clause (16) of s. 3 and he should further make an order in writing directing that the same be used for any other specified communal purpose or if the same is not required for any communal purpose, that it be converted into ryotwari land or landholder's ryoti land. It is clear from sub-s.

(2) of s. 20-A that without a written order of the District Collector under cl. (b) of sub-s. (1), no land which was set apart for any of the purposes referred to in sub-cls. (a) and (b) of cl. (16) of s. 3 can be assigned or used for any other purpose. The order of the Collector on which the first appellant has relied is an incomplete order. Apart from making a declaration that Survey Nos. 16 to 18 are no more required for purposes for which they were originally intended, the Collector did not appear to have made any order under cl. (b) of s. 20-A. Hence despite the order of the Collector, Survey Nos. 16 to 18 continue to be communal lands.

Reliance was next placed by the appellants on the order of the Estates Manager dated December 21, 1952 (Ex. B-2) for claiming title to the suit properties. In this order the Estates Manager proceded on the basis that the Collector's order to which we have already made reference had already converted Survey Nos. 16 to 18 into ryotwari lands. This is an erroneous assumption. That assumption cannot confer any right on the 1st appellant. The Estates Manager is not shown to have had any power under any law to convert the communal lands into ryoti lands. Hence his order cannot be considered as having validly converted the suit lands into ryoti lands.

Lastly appellants sought support from the order of the Assistant Settlement Officer made on December 10, 1955 (Ex. B-30). This order was made during the pendency of the suit and without notice to the plaintiffs-respondents. It is purported to have been made under s. 11(a) of the Estates Abolition Act. Under that order the Assistant Settlement Officer granted to the 1st appellant ryotwari patta in respect of Survey Nos. 16 to 18. Section 11 of the Estates Abolition Act, does not authorise the Assistant Settlement Officer to convert the communal land into a ryoti land. That section reads :

> "Every ryot in an estate shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of—
>
> (a) all ryoti lands which, immediately before the notified date, were properly included or ought to have been properly included in the holding and which are not either lanka lands or lands in respect of which a land-holder or some other person is entitled to a ryotwari patta under any other provision of this Act; and
>
> (b) all lanka lands in his occupation immediately before the notified date, such lands having been

in his occupation or in that of his predecessors-in-title continuously from the 1st day of July 1939 :

Provided that no person who has been admitted into possession of any land by a landholder on or after the 1st day of July, 1945 shall, except where the Government after an examination of all the circumstances otherwise direct, be entitled to a ryotwari patta in respect of such land.

Explanation :—No lease of any lanka land and no person to whom a right to collect the rent of any land has been leased before the notified date, including an ijardar or a farmer of rent, shall be entitled to a ryotwari patta in respect of such land under this section."

The lands with which we are concerned are not lanka lands nor were they declared to be ryoti lands either under the Abolition Act or under the Estates Land Act. That being so, the Assistant Settlement Officer had no competence to grant ryotwari patta in respect of those lands—see the decision of the Madras High Court in *Valathar Mooppannar and ors.* v. *The Board of Revenue, Madras*(1). That officer has purported to grant the patta in question even without notice to the interested parties and that during the pendency of the suit.

For the reasons mentioned above, we are unable to accept the contention of the appellants that Survey Nos. 16 to 18 have ceased to be communal lands or that the appellants had obtained any lawful title to them.

It was urged that the order of the Assistant Settlement Officer whether the same was in accordance with law or not must be deemed to be final in view of s. 56 of the Abolition Act. This contention is again untenable. Section 56 says :

"(1) Where after an estate is notified, a dispute arises as to (a) whether any rent due from a ryot for any fasli year is in arrear or (b) what amount of rent is in arrear or (c) who the lawful ryot in respect of any holding is, the dispute shall be decided by the Settlement Officer.

(2) Any person deeming himself aggrieved by any decision of the Settlement Officer under sub-section (1) may, within two months from the date of the decision or

(1) (1966) 1.M.L.J. 354.

A such further time as the Tribunal may in its discretion allow, appeal to the Tribunal and its decision shall be final and not be liable to be questioned in any Court of law."

The decision of the Settlement Officer which is made final under B this section must be a decision in respect of one of the matters referred to in sub-s. (1) of s. 56. The controversy with which we are concerned in this case *viz.* whether the suit lands continue to be communal lands does not fall within the scope of that section. Hence we are unable to accept the contention of the appellant that the order made by the Settlement Officer has become final or conclusive. It is a wholly invalid order. In this view, it is not neces- C sary to consider whether an order made under s. 11 without notice to the interested persons can be considered as a valid order.

The contention that the civil courts have no jurisdiction to go into the controversies arising for decision in this case in view of s. 189(1) of the Estates Land Act is again without merit. That section provides : D

"A District Collector or Collector hearing suits or applications of the nature specified in Parts A and B of the Schedule and the Board of Revenue or the District Collector exercising appellate or revisional jurisdiction therefrom shall hear and determine such suits or applica- E tions or exercise such jurisdiction as a Revenue Court.

No Civil court in the exercise of its original jurisdiction shall take cognizance of any dispute or matter in respect of which such suit or application might be brought or made."

F The jurisdiction of the civil courts is taken away only in respect of suits or applications of the nature specified in parts (A) and (B) of the Schedule to the Act. No reliance was placed by the appellants on any of the matters mentioned in part (A) of the Schedule. Even as regards matters mentioned in part (B) reliance was only placed on item 5 of that Schedule. Part B refers to applications to be disposed of by a District Collector or Collector. G Item 5 refers to a decision of the Collector under s. 20-A(1). We have already come to the conclusion that the Collector had made no order under that section. Hence s. 189 of the Estates Land Act is not attracted to the present case. The dispute with which we are concerned is a civil dispute. Therefore the courts below had jurisdiction to decide the same under s. 9 of the Civil Procedure H Code.

The only other contention that remains to be considered is that the communal rights in the suit lands stood abolished under s. 3 of

the Estates Abolition Act. This contention does not appear to have been taken before the High Court. Therefore we see no justification to go into that contention. That apart, there appears to be no basis for that contention. Section 3(a) of the Estates Abolition Act, repeals several acts including the Madras Estates Land Act, 1908. In view of cl. (b) of that section all Estates including the communal lands, porambokes and other ryoti lands, waste lands, pasture lands, lanka lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works; fisheries and ferries stood transferred to the Government and vested in them free from all encumbrances. It further provides that the Madras Revenue Recovery Act, 1864, the Madras Irrigation Cess Act, 1865 and all other enactments applicable to ryotwari areas shall apply to that estate. Clause 3 of that section prescribes that "all rights and interests created in or over the estate before the notified date by the principal or any other landholder shall as against the Government cease and determine."

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It is true that the suit lands in view of s. 3 of the Estates Abolition Act did vest in the Government. That by itself does not mean that the rights of the community over it were taken away. Our attention has not been invited to any provision of law under which the rights of the community over those lands can be said to have been taken away. What has been abrogated is the rights and interests created in or over the estate before the notified date by the principal or other landholder. The rights of the community over the suit lands were not created by the principal or any other landholder. Hence those rights cannot be said to have been abrogated by cl. (c) of s. 3 of the Estates Abolition Act.

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In the result this appeal fails and the same is dismissed with costs.

V.P.S. *Appeal dismissed.*