

62/006888/2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2011

CORAM

THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P.No.8602 of 2004

1. C. Raman
2. P. Nagulan
3. V. Palani
4. Chinnakkuruppan
5. R. Subben
6. P. Govindappan
7. N. Periyen
8. S. Ramasamy
9. M. Nachimuthu
10. S. Ramasamy
11. S. Karuppan
12. S. Nachi
13. S. Thangamuthu
14. S. Kalimuthu
15. P. Annadurai
16. S. Subramaniam
17. Rasappan

Vs.

1. The Secretary to Government,
Revenue Department,
Secretariat, Chennai-9.

2. The Land Commissioner,
Land Reforms, Chepauk, Chennai-5.

3. The Assistant Commissioner,
Land Reforms, Erode-2.

...Petitioners

... Respondents

This is a writ petition for the issuance of writ of certiorari to call for the records of the first respondent in letter Ms.No.431, Revenue Department, dated 16.08.2000 and other respondents and consequently set aside the order passed by the second respondent in D1/RP.No.5/99 dated 24.06.1999 and to quash the said orders as illegal, void and arbitrary.

For Petitioners : Mr.D.Balachandran

For Respondents : Mr.M.Dhandapani, Spl.G.P.

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ORDER

Originally, the 17 petitioners filed Special Revision Petition under Section 83 of the Tamilnadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 before the Tamil Nadu Land Reforms Special Appellate Tribunal, Chennai, challenging an order dated 16.08.2000 passed by the first respondent State in refusing to entertain the revision application filed under Rule 11(4) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 (for short DSL Rules) as it was time barred. The said revision was taken on file as SRP.No.40 of 2000.

2. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as CRP No.1945 of 2003. However, a learned Judge of this court opined that no Civil Revision Petition will lie as the officers whose orders under challenge were not a Court but only statutory authorities. Therefore, the CRP was converted into writ petition and notice was ordered.

3. Even when the matter was pending before the Tribunal, the respondents have filed a counter affidavit dated 19.01.2001.

4. The learned counsel for the petitioners subsequently filed written submissions as well as additional written submissions together with additional typed set of papers 02.07.2010.

5. The case of the petitioners was that 49.02 acres of land comprised in S.Nos.372, 374/4, 381 and 300/2 etc., situated in Ponnagaram Village, Dharepura Taluk were declared as surplus from the holdings of one Late Deivasigamani, land owner. A notification under Section 18(1) of the Land Reforms Act was published in the TamilNadu Government Gazette on 21.04.1993. After following the procedure under Disposal of Surplus Land Rules, 1965, the Assistant Commissioner, Land Reforms assigned these lands to 23 eligible persons by an order dated 20.12.1993.

6. Aggrieved by the said assignment, an appeal was filed by the petitioners before the Appellate authority/District Revenue Officer (Land Tribunal, Thanjavur). The Land Tribunal in its order in APDSL 4/1994 to 23/1994 dated 22.08.1994 allowed the appeals and the assignment made vide proceedings dated 20.12.1993 was set aside in so far as the petitioners were concerned and a direction was given to pass fresh orders. Accordingly, the third respondent cancelled the order of assignment dated 20.12.1993 vide order dated 13.01.1995. He subsequently issued fresh assignment orders dated 21.03.1995. Thus the petitioners became assignees of surplus land. They are agriculturists and entitled to priority in the matter of assignment as they were also cultivating tenants and involved in direct cultivation.

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7. After the aforesaid order, the petitioners were given Form 'F' by the third respondent on 08.05.1995. They were called upon to pay the land value as per the 'F' deed given to them. The petitioners paid the entire land value and were cultivating the land continuously till date. Thus the order dated 21.03.1995 was not challenged by any persons. But however, it transpired that Form 'B' dated 30.05.2000 was published in the village inviting applications for assignment of the above lands. On enquiry, it was known that the assignment made on 21.03.1995 in favour of the petitioners was cancelled in R.P.No.5/1999 on 24.06.1999 by the second respondent. The petitioners were not served with the copy of the order passed by the second respondent. The observation made by the second respondent in the impugned order was that the petitioners are not residing in the village in which surplus lands were situated.

8. The contention of the petitioners was that even if they temporarily stayed away, that cannot disqualify them from being the residents of the village. Actually, they were making personal cultivation in the land in question. The suo motu proceedings initiated by the second respondent was invalid. Such a suo motu proceedings cannot be done at the behest of the villagers, whose petitions were not only frivolous but are not maintainable. The earlier order of assignment was not under challenge. The suo motu power can be exercised only within a period of three years. The assignment was made to the petitioners on 21.02.1995 and the show cause notice was issued on 09.01.1999. It was beyond the period of three years.

9. In the additional written statement, the petitioners submitted that in the suo motu revision, no opportunity was given to the petitioners. The petitioners have also enclosed the order of assignment as well as the kist receipts.

10. The learned counsel for the petitioners relied upon the judgment of this Court in M.R.Samiappan v. The Secretary to Government, Revenue Department reported in 1988 1 LW 165 to contend that the cancellation of assignment should be done only for a valid reason and not arbitrarily. Unless the earlier order was mistakenly made or on a wrong assumption of facts, the power of revision cannot be exercised.

11. He also referred to the judgment of this Court in M/s.Yoshonand Enterprises, Madras v. The Sub-Collector of Chengalpattu and others reported in 1993 1 LW 360 for contending that the impugned orders suffers from principles of natural justice.

12. In the counter affidavit, it was stated that the Land Tribunal set aside the order of assignment dated 20.12.1993 in so far as the applicants and the respondents therein are concerned and directed to pass fresh speaking order. The Assistant Commissioner, Land Reforms, Erode subsequently issued fresh order

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dated 21.03.1995 assigning 49.02 acres to 17 persons after rejecting the applications of 33 persons. But the villagers mostly forming Adi Dravidars of Naranapuram and Ponnapuram Villages of Dherapuram Taluk sent petition to all authorities against the order cancelling the assignment. Therefore, the records of the Assistant Commissioner, Erode culminated in the cancellation and re-assessment of surplus lands were subjected to scrutiny by the Commissionerate of Land Reforms under Section 11 (3) (b) of the DSL Rules. On verification of the connected MRIV Records, it was found that the allegation made by the villagers were true and there were certain irregularities in the cancellation of earlier assignment. Therefore, the Land Commissioner by virtue of power vested under Rule 11(3) (b) of the DSL Rules took up the case for suo motu revision and the assignees of the re-assignment were issued with a show cause notice and the matter was adjourned from time to time. The show cause notice could not be served to the 17 assignees since the whereabouts of the assignees were not known even after enquiry by field level officers. When the Assistant Commissioner was directed to issue show cause, she has reported in her letter dated 05.04.1999 that after making detailed enquiry with the concerned villagers that the assignees were not residing at the address given in 'C' form application and the present address of the assignees could not be ascertained from any source. Therefore, it was found that the re-assignment was made to persons who are not actual residents of the village and who are not directly cultivating the lands. It was in that view of the matter, the assignment was cancelled. The Assistant Commissioner was directed to take note of the earlier request of assignment in 'C' form. The petitioners in the meanwhile moved the Government under Rule 11(4). The Government dismissed their revision petition on 16.08.2000 as time barred.

13. It must be noted that the lands which were acquired by virtue of the taking over of surplus land due to the ceiling act, it can be assigned to other persons in terms of Section 94 of the Land Reforms Act. It is under the said power, the Government has framed Tamil Nadu Land Reforms (Disposal of Surplus Land), Rules 1965. The petitioners were misconceived that a revision to the Land Commissioner were available under Section 82. The revision under Section 82 of the Land Reforms Act is only in respect of the proceedings noted therein. But with reference to DSL Rules, it is only Rule 11 provides for revision in case no appeal is provided. Under Rule 11(3), the Land Commissioner has been given power to suo motu revision. Under Section 82 itself, limitation has been increased from 3 years to 5 years by the amendment made to Rule 62 of the Land Reforms Rules 1962. While Rule 11(3) of the DSL Rules provides for 5 years as limitation, Rule 11(4) provides for further revision to Government, restricted to only one year. Therefore, when the petitioners moved the Government, the Government has rightly rejected their revision as time barred. The petitioner thereafter cannot set up a special revision before the Tribunal attacking the order dated 16.08.2000. No other order is attacked in the Special Revision

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Petition filed before the Tribunal which is converted as a writ petition. Even in the writ petition, there is no challenge to the order of the Land Commissioner.

14. The writ petition is liable to be rejected not only on the ground that the earlier order was not under challenge but also on the ground that the persons who made complaints which led to the exercise of suo motu revision was also not made parties to the writ petition. On the other hand, the Authorised Officer has been directed to identify the real beneficiaries after taking note of the applications and decide the matter afresh. The contentions raised by the petitioners that they were not given notice cannot be accepted as they had failed to prove that they are the residents of the village in question. The efforts taken by the respondents to serve notice had failed as the petitioners were not found to be residents as submitted by them in the 'C' Form. The petitioners will have to blame themselves and cannot attack the respondents for not giving notice.

15. The petitioners have not made out any case for entertaining the writ petition. Hence, the writ petition stands dismissed. No costs.

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Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

1. The Secretary to Government,
Revenue Department,
Secretariat, Chennai-9.

2. The Land Commissioner,
Land Reforms, Chepauk, Chennai-5.

3. The Assistant Commissioner,
Land Reforms, Erode-2.

+ 1 cc to Mr. D. Balachandran, Advocate SR No. 32143

CK(CO)
SR/16.6.2011

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MR IV - Affidavit

Revision provided u/s 22 of
the Act and Revision provided under
Rule 11(3) are different one.
The petrs. were mis conceived.