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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Monday, the sixth day of August
One thousand nine hundred and seventy nine.

PRESENT

The Honourable Mr. Justice Varadarajan

Writ Petition No. 1727 of 1977.

K. Paramasivam

.. Petitioner

Vs.

1. Board of Revenue, represented by .. Respondents
Commissioner (Land Reforms), Madras-5.

2. The Government of Tamil Nadu represented
by the Secretary, Revenue Department,
Fort St. George, Madras-9 (Substituted
as per order, dated 1st August 1977 and
made in WMP 3229/77)

3. M. Ramasamy Naicker

Petition under article of 226 of the constitution of India
praying that in the circumstances stated therein and in the affi-
davit filed therewith the High Court will be pleased to issue a
writ of certiorari calling for the records pertaining to the order
of the second respondent made in G.O.Ms.No.100, Revenue Department,
dated 18th January 1977 and quash the same.

This writ petition coming on for hearing on Monday, the 30th
day of July 1979 and on this day upon perusing the petition and
the affidavit filed in support thereof the order of the High
Court, dated 2nd August 1977 and made herein and the counter
affidavit filed herein and the records relating to the order in
G.O.Ms.No.100, Revenue Department, dated 18th January 1977 on the
file of the Second respondent herein comprised in the return of
respondents 1 and 2 herein to the writ made by the High Court and
upon hearing the arguments of Mr. C. Selvaraj, Advocate for the
petitioner and of Mr. D. Krishnan for the Government Pleader on
behalf of the first and second respondent and of Mr. R.S. Venkata-
chari advocate for the third respondent the court made the
following order:

This writ petition has been filed under article 226 of the
constitution of India for the issue of a Writ of Certiorari or
any other appropriate writ or order calling for the records

relating to the second respondent's (Government of Tamil Nadu) order in G.O.Ms.No.100, Revenue Department, dated 18th January 1977 and for quashing that order.

By an order, dated 18th April 1971 the Authorised Officer assigned 1 acre 55 cents of land in S.No.195/7 of Sirupakkam Village, Vridhachalam taluk under the scheme of assignment of surplus lands taken over in pursuance of the Land Ceiling Act. The third respondent Mr. Ramasamy Naicker, filed an appeal against that order before the District Revenue Officer, South Arcot at Cuddalore, who dismissed that appeal by his order No. Rc. D1/72363/71, dated 22nd July 1972. The third respondent filed a revision petition under rule 10 of the rules before the Board of Revenue the first respondent. The first respondent fixed the matter for hearing on 18th May 1974, but the third respondent did not appear on that date and the petition was dismissed on the ground of non-participation according to the petitioner. The third respondent's preferred a further revision to the Government of Tamil Nadu, the second respondent. It is the petitioner's case that the respondent passed the impugned order holding that the revision petitioner should have been disposed of on merits and not for non-participation. The grounds alleged in support of the writ petition are that the petitioner was not given an opportunity of being heard before the impugned order was passed by the second respondent and that the second respondent had no revisional powers at that time and the second respondent could have exercised suo motu power but not on the revision petition filed by a party to the proceedings before the lower authorities.

In the counter affidavit it has been contended that under rule 11(4) of the rules, the second respondent has power to modify or set aside any order of the Board of Revenue that only the dismissal order has been set aside by the second respondent and the matter has been remanded and the assignment has not been cancelled and therefore there is no necessity of giving an opportunity of being heard.

The learned counsel for both the sides agree that notice should have been given to the petitioner before the order of the first respondent had been set aside and the matter remanded to the first respondent. The complaint of the petitioner that no opportunity-

nity had been given to him for being heard before the impugned order was passed is well-founded. The impugned order is, therefore set aside and the matter is remanded to the second respondent for fresh consideration after giving an opportunity to the petitioner for being heard in the matter.

The parties will bear their respective costs.

(Sd.) K. Madhavan,
Assistant Registrar (P).

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