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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)

Wednesday, the eighth day of September
One Thousand Nine Hundred and Seventy Six

PRESENT:

The Honourable Mr. Justice MOHAN

Writ Petition No. 2786/76

E. Ponnuswamy Udayar .. Petitioner

Vs.

1. The Authorised Officer (L.R.),
Cuddalore-1
2. The Land Commissioner, Board of Revenue, Chepauk,
Madras-5. Respondents

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith the High Court will be pleased to issue a Writ of Certiorari calling for the records comprised in the proceedings of the first respondent in the notification in the form No.9 under section 12 of the Act dated 27th July 1973 and that of the 2nd respondent dated 6th December 1975 in his R.P. No. Fl/225/73 (Land Reforms) and quash the orders of the respondents dated 27th July 1973 and 16th December 1975.

ORDER:

This Writ Petition coming on for hearing on Tuesday, 7th September 1976 and on this day upon perusing the petition and the affidavit filed in support thereof and the order of the High Court, dated 16th July 1976 and made herein and the records comprised in the proceedings of the 1st respondent in the notification in the Form No.9 under Section 12 of the Act dated 17th July 1973 and R.P. No. Fl/225/73 (Land Reforms) dated 16th December 1975 on the file of the respondent comprised in the return of respondents to the Writ made by the High Court and upon hearing the arguments of Mr. R. Krishnamurthy, Advocate, for the petitioner, and of Mr. N.R. 52/6--14

Chandran for the Government Pleader for the respondents 1 and 2, the Court made the following order:—

The matter arises under the Tamil Nadu Land Reforms Act, 1961, and the short facts are as follows:—

The petitioner held an extent of 17.37 standard acres equivalent to $42.65\frac{1}{2}$ ordinary acres at Nariyendal village, Tirukovilur taluk, South Arcot district. The first respondent (The Authorised Officer, Land Reforms, Cuddalore) initiated proceedings under the Tamil Nadu Land Reforms Act, 1961, as amended by Tamil Nadu Act 17 of 1970 (hereinafter referred as the Act) to fix the holding of the petitioner. On 5th April 1970, there was a partition in the family of the petitioner in which he was allotted 17 ordinary acres and the petitioner's son was allotted $17\frac{1}{2}$ ordinary acres and the nephew of the petitioner was allotted 26 ordinary acres. A draft notification under Section 10(1) was prepared by the Authorised Officer and the enquiry concerning the same was scheduled to take place on 8th May 1973. This was served on the petitioner only on 8th May 1973, and, therefore, he could not attend the enquiry. On 27th July 1973, a final statement under section 12(2) came to be passed, determining the holding of the petitioner at $45-65\frac{1}{2}$ ordinary acres equivalent to 17-37 standard acres as a result of which 2.37 standard acres were declared as surplus. Against this order, it was well open to the petitioner to have preferred a revision to the Land Tribunal under Section 81 of the Tamil Nadu Land Reforms Act, as it stood before the amending Act 39 of 1972. By this amending Act 39 of 1972, a revision came to be provided under Section 82. Therefore, he filed a revision, before the Land Commissioner, who curiously enough passed the impugned order dated 16th December 1975 holding that since the petitioner did not file an appeal against the draft statement issued under Section 10(5) he had no remedy under Section 12(2). It is this order which is attacked in the Writ Petition for certiorari.

Mr. R. Krishnamurthy, learned counsel for the petitioner strenuously urges before me that the order of the Land Commissioner suffers from an error apparent on the fact of the record and even on merits he had passed a confused order without understanding the true scope of the Act. The learned Government Pleader submits when it was open to the petitioner to have filed an appeal under Section 10(5), these matters cannot be reagitated in revision to

the Land Commissioner under Section 82 of the Tamil Nadu Amending Act 39 of 1972.

I am totally unable to comprehend the argument advanced on behalf of the respondent. Undoubtedly, the Land Commissioner under Section 82 has revisional jurisdiction. Therefore, irrespective of the fact whether an appeal was filed against an order under Section 10(5) or not, it was the duty of the Commissioner to have dealt with the revision in merits. But if find that he was mainly influenced by the petitioner not filing an appeal against a draft statement issued under Section 10(5). Even on merits I find that the complaint of the Writ Petitioner is well justified. The Commissioner has not properly appreciated the scope of Section 21-A which recognises any partition entered into or before the 2nd October 1970. Under these circumstances, I have no other option but to quash the impugned order and remit the matter to the Commissioner for fresh disposal in accordance with the observations made above.

Accordingly, the writ petition is allowed. There will be no order as to costs.

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