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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

Wednesday, the Seventh day of March
One thousand nine hundred and seventy nine.

PRESENT

The Honourable Mr. T. Ramaprasada Rao, Chief Justice
and

The Honourable Mr. Justice Ratnam

Writ Petition No. 3206 of 1975

G. Balasubramanian

.. Petitioner

Vs.

1. The Authorised Officer, Land Reforms, .. Respondents
Coimbatore.

2. The Land Commissioner, Board of
Revenue (Land Reforms), Chepauk,
Madras-5.

3. The State of Tamil Nadu represented
by the Secretary Revenue Department,
Fort St. George, Madras-9.

P 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 relating to the
order of the second respondent herein, dated 15th November 1974
and made in L.Dis.No.F2/37227/74 (Land Reforms) and quash the
same.

ORDER:

This writ petition coming on for hearing on this day upon
perusing the petition and the affidavit filed in support thereof,
the order of the High Court, dated 3rd July 1975 and made herein,
and the counter affidavit filed herein and the records relating
to the order in L.Dis.No.F2/37227/74 (Land Reforms), dated 15th
November 1974 on the file of 2nd respondent herein and the
connected records on the file of the 1st and 3rd respondent herein
and comprised in the return of the Respondents herein to the
writ made by the High Court, and upon hearing the arguments of
Mrs. Ramalingam for M/s. E. Padmanabhan and R. Mohan, Advocates
for the petitioner, and of the Government Pleader on behalf of
the respondent, the court made the following order:--

(The order of the court was delivered by the Honourable the Chief Justice)

In this writ petition, the petitioner who is a land holder and who is the affected party under a notification issued by the Authorised Officer functioning under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 herein after referred to as the Ceiling Act) seeks a Writ of certiorari.

The case of the petitioner is that he owns lands and on the supposition that he owns lands in excess of the ceiling limit fixed under the ceiling Act, proceedings were taken by the statutory tribunal and by an order, dated 19th April 1966 the Authorised Officer, Land Reforms, Coimbatore declared an extent of 3.45 acres of this lands as surplus and made the consequential orders thereon. According to the petitioner, he was surprised to receive a Gazette Notification in Form VI, dated 14th August 1970 issued under rule 12(1) read with Section 10(1) of the Ceiling Act, stating that an extent of 7.24 acres of his lands was declared as surplus. Naturally he submitted his objections. He admits that he was heard over the matter and ultimately learnt that an order was made by the Authorised Officer declaring the lands to the extent of 7.24 acres as a surplus lands on 16th May 1973 and it was served on the petitioner on 30th May 1973. It is no doubt true, and indeed it is the common case, that as on the date when the said order was made by the Authorised Officer, there was no express rule or limitation prescribing the time for filing a revision petition to the Land Commissioner as against the order of the Authorised Officer, though such a right was available to the affected land-holder under the ceiling act. It appears that by the Tamil Nadu Act 8 of 1974 which was enacted to amend the Ceiling Act, a period within which an application for revision under Section 82 of the Act may be presented, was also introduced as one of the clauses to section 110, which is the parent section providing for the rule making power of the executive under the Act as above. Section 110 of the Act as it stood on the date when the Authorised Officer passed the order dated 16th May 1973 admittedly did not make any provision enabling the State Government to make a rule in relation to the period within which an application for revision under section 82 of the Act should be presented. Inci-

dentally it would be convenient to refer to Section 82 of the Act for the purpose of completion. Section 82 deals with the power of revision of the Land Commissioner, Inter alia it provides that the Land Commissioner may call for and examine the record of any authorised officer in respect of any proceedings under the various sections noted therein including section 18(4) with which were are concerned and satisfy himself as to the regularity, legality of propriety of the decision of the Authorised Officer or such of those officers who are empowered under the Act to pass the relevant orders under the various sections mentioned therein. Rule 62 was introduced after amending the Act, by which time limit was provided for filing revision.

To continue the narration, the petitioner though admittedly received the impugned order passed by the Authorised Officer on 30th May 1973 fixing the ceiling limit of his and the surplus land as 7.24 acres, did not take any steps to file any revision soon thereafter. But the case of the petitioner is that he filed such a revision on 23rd September 1974 to the Land Commissioner who by his order dated 15th November 1974 rejected the said application as time barred, after referring to a rule which was passed pursuant to Section 110(q) added by the Tamil Nadu Amending Act 8 of 1974. Under this rule which was referred to by the Land Commissioner in the challenged order as G.O.Ms.No.1281, Revenue, dated 23rd March 1974, an express provision is made whereby an affected party whose ceiling has been fixed by the statutory tribunal could file a revision petition to the Land Commissioner within 60 days from the date of receipt of the order or within 30 days thereafter, if the commissioner excused the delay in the presentation of such revision within the prescribed time. The petitioner having filed the revision in this case on 23rd September 1974 when the rule fixing the time for filing the revision received the assent of the president on 2nd March 1973 and came into force on 15th February 1974 the Land Commissioner was of the view that the revision petition filed on 23rd September 1974 was beyond time and, therefore, dismissed the same on 15th November 1974. It is as against that the present writ petition has been filed.

The contention of the learned counsel for the petitioner is that on the date when the order was passed by the Authorised Officer, there was no specific provision of law fixing the period
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of time within which he could challenge the order under which he was affected and a right of appeal being a statutory right and a vested one too, that could not be divested by a supervening rule made by the Government under its rule-making power. Reliance, is placed upon a decision of the Supreme Court reported in *Jarika-pati V. Subbiah Choudhry* (A.I.R. 1957 Supreme Court 540). That was a case which considered the scope or right of appeal. There, the learned judges pointed out the scope and the rule content of an appeal by stating that the right of appeal is not a mere matter of procedure, but it is substantive right and that being a vested right and a right to enter the superior court, cannot be divested except by an enactment by the appropriate and competent legislative by an express provision made for the purpose, or in the alternative, by a provision made by necessary implication serving the same intendment.

The case of the petitioner, therefore, is that as Act 8 of 1974 was passed long after the order passed by the Authorised Officer, the vested right to file a revision which is more or less in the field of appeals which a litigant has cannot be lightly brushed aside or whittled away by a subsequent rule made by the executive, though under the portion of a valid Act. There is a fallacy in this argument. The learned counsel for the petitioner apparently did not refer to Tamil Nadu Act 8 of 1974. The prescription as to the time within which a revision or an appeal should be filed to the higher hierarchy has been fixed not by the executive, but by an Act of the Legislature. Section 110 of the ceiling Act enables the Government to make rules to carry out the purpose of the Act. Eventhough the State Government has the requisite power to make a rule consistent with the provisions of the Act and for the purpose of carrying out its intendment and purpose, nevertheless, the State Legislature in its wisdom thought that an independent enactment such as an amending law was necessary to as to provide for a time limit for the filing of an application for revision under Section 82 of the Act. It was in that context that the rule making power has been amended to as to include the clause 110(q) in the said Act. It cannot therefore be contended that the norms to the time limit for the filing of such a revision has been so fixed by an Act of the executive, but on the other hand, in the instant case, it was the legislative which

expressly provided for such a fixation of a time limit and, therefore it has the sanction of law behind it. We are of the view, therefore that section 110(q) included by Tamil Nadu Amending Act 8 of 1974 is a valid piece of legislation, which has to be followed by an affected party, if he wants to take advantage of the statutory preveleges arising under it.

The Authorised Officer passed the challenged order on 16th May 1973 Section 110(q) of the Act, having received the assent of the President on 2nd March 1973 secured the force of law on 15th February 1974 which is the date of publication of the amendment. Rule 62 was introduced pursuant to Section 110(q) on 23rd March 1974. It, therefore, follows that the petitioner ought to have filed this revision petition under Section 82 of the Land Commissioner on or before 23rd May 1974 as the period fixed under Rule 62 is admittedly 50 days. In fact a grace period of 30 days also is provided therein within which time the affected party could approach the higher hierarchy for excusing the delay in filing such revision petition before it is time. Even taking the grace period as provided for under Rule 62 as above, the petitioner ought to have filed the revision petition on or before 23rd June 1974. Even that has not been done, because the revision petition admittedly was presented only on 23rd September 1974. The order of the Land Commissioner is therefore, correct. The same is sustained and the Writ Petition is dismissed. No costs.

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

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